(17,513.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 133.

JOEL PARKER WHITNEY AND FRANKLIN H. STORY, APPELLANTS,

vs.

THE UNITED STATES, ELOISA BERGERE, ET AL.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

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a JOEL PARKER WHITNEY and FRANKLIN H. STORY, Appellants,
vs.
UNITED STATES OF AMERICA.

Appeal from the court of private land claims.

1 UNITED STATES OF AMERICA, } ss:
Territory of New Mexico, }

Be it remembered that heretofore, to wit, on the first day of March, A. D. 1893, there was filed in the office of the clerk of the court of private claims, at the city of Santa Fé, in the Territory of New Mexico, a petition; which said petition is in the words and figures following, to wit:

2 In the Court of Private Land Claims of the United States.

JOEL PARKER WHITNEY and FRANKLIN H. STORY, Petitioners,
vs.
THE UNITED STATES OF AMERICA, ELOISA BERGERE, A. M. BERGERE, Mary J. Otero, Miguel A. Otero, Page Otero, Mamie J. O'Bryan, and Harry J. O'Bryan, Respondents.

To the Honorable Joseph R. Reed, chief justice of the court of private land claims of the United States:

The undersigned, Joel Parker Whitney and Franklin H. Story, by this their petition complaining of the United States of America, Eloisa Bergere, A. M. Bergere, Mary J. Otero, Miguel A. Otero, Page Otero, Mamie J. O'Bryan, and Harry J. O'Bryan, respondents, show unto the said court as follows, viz:

On the seventh day of December, A. D. 1845, Antonio Sandoval, a Mexican citizen of high distinction, who had theretofore for many years faithfully served the Republic of Mexico as a civil and military officer, and also greatly aided the said Republic by loans and advances of large sums of money out of his private estate,
3 for which the said Republic was then his debtor, presented to Manuel Armijo, then the governor of New Mexico, and then authorized and commissioned by the supreme executive of the said Republic and by the laws of the said Republic to make grants, sales, and other dispositions of its public domain, a petition in writing signed by him, the said Antonio Sandoval, and dated on the fifth day of the same month, whereby he prayed the said governor in the name of the supreme authority of the said Republic to grant him in possession *integram* the Salt Lakes tract, assigning as boundaries on the north a line one league north of the Berrendo spring (the said spring being within the tract so solicited), on the south a line one league south of the Salt lakes, on the east the little hills of the Pedernal, and on the west the waters of the Mesteñas, and by which petition he represented to the said governor that the tract of land so

solicited was vacant and in a condition of mortmain, and that the grant so solicited would be without prejudice to any third party, and he further represented that he desired to use the said tract of land for the pasture of his live stock, and he further prayed that the said grant, if made, should be made free and exempt from tax.

With the said petition the said Antonio Sandoval submitted to the said governor for his consideration an official certificate of Jose Serafin Ramirez y Casanoba, comptroller of the departmental treasury of New Mexico and acting treasurer of the same, dated on the sixth day of the same month, whereby the said comptroller and acting treasurer certified that during the period of forty years (as appeared from records of the treasury) the said Antonio Sandoval had been serving the nation as a military and civil officer, and also
that he had loaned numerous sums of money to the treasury
4 of the nation without receiving one-half real interest, and
that there were then large sums due him, as appeared from the entries in the office of the said comptroller and treasurer and the evidence in possession of the said Antonio Sandoval, on account of salaries and loans.

The said governor, in consideration of the said petition and certificate and of the facts therein set forth, made, on the seventh day of December, A. D. 1845, in the name of the supreme government of the Mexican nation, a grant to the said Antonio Sandoval of the land solicited by the said petition, with all the dimensions and pasture lands so asked for and free and exempt from all tax or tribute, and the said governor, in his granting instrument or decree by which the said grant was so made, recited that the government was convinced of the valuable services the said Antonio Sandoval had rendered and was then rendering to the country, as well during the time referred to by him in his said petition as also during the six years that he served in the administration of the prefecture of the second district, with the salary of $1,500, of which not even a half real had been paid to him, the sum due him amounting to $9,000, and he also adjudged and recited that the statements in the said petition were true, and he also declared that the said grant was a just title.

Thereupon, under the direction of the said governor and in conformity with the then existing laws, usages, and customs of the said Republic, the proper judicial officer having jurisdiction in that behalf, namely, Jose Baca y Ortiz, justice of the peace of Real del Oro, delivered to the said Antonio Sandoval juridical seisin and possession of the said tract of land on the fifteenth day of Decem-
5 ber, A. D. 1845, in obedience to the said decree—that is to
say, the said judicial officer, in execution of the said decree, proceeded to the said granted tract of land in company with his two attending witnesses to mark the limits and boundaries of the said tract, and the said grantee being represented on the ground by his agent in that behalf, Juan Antonio Aragon, the said judicial officer then and there exhibited to the said grantee (by his said agent) the said petition and enjoined the said grantee for the greater security of his interest to maintain a force of men with good arms to be ready

for an emergency, and thereupon the said judicial officer, with the ceremonies customary in such cases, inducted the said grantee (by his said agent) into full, quiet, and peaceable possession of the said granted land, designating to him the boundaries thereof as follows:

On the north one league from the Berrendo spring, the said spring being included in the possession; on the south one league from the Salt lakes, the said lakes also being so included; on the east the little hills of the Pedernal with the range thereof, and on the west the water of the Mesteñas.

Having so delivered seisin and possession of the said granted land, the said judicial officer thereupon, for testimony thereof in all time to come, executed and delivered to the said grantee an act of juridical possession in the premises in due form of law that it might serve him as a formal title.

Duplicate copies in both Spanish and English of the said petition, certificate, granting decree, and act of juridical possession are filed herewith, the originals of all and singular the said instruments being now in the archives of the Government of the United
6 States of America, kept in the office of the surveyor general for New Mexico, at the city of Santa Fé, New Mexico.

The said granted tract of land is all situate in the county of Valencia, in the Territory of New Mexico, and it has been surveyed, by authority of the United States, as a private land claim, and a map thereof as so surveyed made, which map is now kept among the archives and in the office last aforesaid. A copy of the said map, correctly showing the extent and boundaries of the said land grant, is filed herewith.

The area of the said granted land is four hundred and fifteen thousand and thirty-six acres and fifty-six one-hundredths of an acre.

The said grantee, Antonio Sandoval, entered upon, possessed, occupied, improved, enjoyed, and claimed all and singular the said tract of land, holding and claiming the same in fee-simple absolute and maintaining thereon an armed force adequate to the defence thereof, under and by virtue of the said grant, and peaceably, openly, continuously, uninterruptedly, and exclusively, from the date of the said act of juridical possession, to wit, the fifteenth day of December, A. D. 1845, until the eighth day of July, A. D. 1848, when the said Antonio Sandoval conveyed the same by an instrument in writing in due form to his nephew, Gervacio Nolan, to whom as his grantee he thereupon transferred and delivered full seisin and possession of the same and every part thereof. The said Gervacio Nolan remained in the peaceable, open, continuous, uninterrupted, and exclusive possession and occupation of all and singular the said granted land, claiming it in fee-simple absolute under and by virtue of the said grant and conveyance until his death, which occurred, your petitioners aver on their information and belief, in the year
7 eighteen hundred and fifty-eight, whereupon the said granted land descended to his descendants, his heirs-at-law, from whom your petitioner Joel Parker Whitney purchased all and

singular the said granted tract of land on the twenty-third day of September, A. D. 1880, by deed of conveyance dated on the same day, executed by Fernando Nolan and others, heirs-at-law aforesaid, and recorded in the office of the probate clerk and *ex officio* recorder of the county of Valencia, as aforesaid, in Book A No. 4 of Deeds, pages 485 to 489, after which, by deed of the said Joel Parker Whitney, dated on the sixth day of November, A. D. 1880, and recorded in the said recorder's office, in Book A No. 4 of Deeds, on pages 498, 499, and 500, one undivided half part of the said granted land was conveyed to your petitioner Franklin H. Story; by virtue of all which conveyances your petitioners are the present owners and claimants of the said land.

On the twelfth day of July, A. D. 1855, the said Gervacio Nolan (who was sometimes known by the name of Gervais Nolan) presented to the surveyor general for New Mexico due notice of his said claim to the said granted land and a petition for the confirmation of the said grant, in which petition he expressly notified and informed the said surveyor general that the said Governor Manuel Armijo granted the said land to the said Antonio Sandoval by virtue of the authority in him vested by the government of Mexico, as will appear by the collection of statutes and decrees of the said government, and also by communications addressed to the aforesaid governor by the authorities of the aforesaid government of Mexico, and that the said communications are or should be deposited in the archives of the Territory of New Mexico, and to which he made reference.

8 The said surveyor general failed to act upon the said petition of the said Gervacio Nolan, but after the death of the latter his widow and heirs-at-law renewed the said application by their petition for confirmation of the said land grant, addressed to the said surveyor general, which petition last mentioned was prepared and presented in behalf of the said widow and heirs by Theodore D. Wheaton, Esq., who was then the United States attorney for New Mexico and familiar with the archives of the United States then kept in the said city of Santa Fé, and in the said petition the said Wheaton, as attorney for the said widow and heirs, stated, in reference to their said private land claim, "that the said Armijo during the time he was governor, as aforesaid, granted said land by virtue of the authority vested in him by the Mexican government, which authority will appear by the collection of statutes and decrees of the aforesaid government, and also by communications addressed to the aforesaid governor by the authorities of the Mexican government, which said communications are to be found in the archives of the Territory, and to which reference is here made."

In fact, there were in the archives of the Republic of Mexico, kept at Santa Fé aforesaid until the cession of New Mexico to the United States of America, and upon such cession turned over to the custody of the latter sovereignty, and thereupon kept as archives of the same at Santa Fé aforesaid, numerous communications between the supreme executive of the Republic of Mexico and the several governors of New Mexico, and especially the said Manuel Armijo,

directing, instructing, and authorizing the said governors, and especially the said Manuel Armijo, to make grants of the public domain in New Mexico in the name of the supreme government of Mexico, and especially to make the grant aforesaid to the
9 said Antonio Sandoval.

All the archives aforesaid which had been theretofore in the custody, first, of Spain and then of Mexico, at Santa Fé aforesaid, including all the archives and official communications aforesaid relating to the granting authority of the said Manuel Armijo, and also relating to the said Estancia grant, had always been carefully and sacredly preserved from waste, loss, or spoliation by the custodians thereof up to the time of the said cession, and upon the said cession they were all surrendered intact to the custody of the Government of the United States of America, at Santa Fé aforesaid, and thereafter for many years they were carefully preserved at Santa Fé aforesaid, by custodians appointed by the Government last aforesaid, but, at a time several years subsequent to the presentation to the said surveyor general by the said Theodore D. Wheaton of the said petition in behalf of the widow and heirs-at-law of the said Gervacio Nolan, the secretary of the said Territory of New Mexico, a commissioned Federal officer having official custody of the palace, at Santa Fé aforesaid, wherein the said archives had been always theretofore kept, in view of the fact that because of certain alterations then recently made in the said palace by the Government of the United States there was not, in his opinion, left therein sufficient room for the said archives in any more suitable place in the said building, caused the said archives, including the official communications aforesaid and several other material instruments and muniments of title pertaining to the said Estancia grant, to be thrown loosely and carelessly, as being so much rubbish, into an unfinished room in the said palace, where, however, the said archives suffered no immediate material injury or waste until the advent into the said Territory of William A. Pile, as governor thereof, commissioned by the President of the United States, where-
10 upon the said governor, William A. Pile, desiring to use the apartment in which the archives had been so stored by the said secretary for some purpose not connected with his gubernatorial office, and being ignorant of the value of the said archives, and without making any adequate inquiry as to their value or importance, gave instructions to the librarian of the said Territory, Ira M. Bond, to have the said archives removed from the said apartment; whereupon the said librarian, obedient to the said instructions, removed the same into an open outhouse, one of the outbuildings of the said palace, which outhouse was very much exposed and was wholly unfit for the protection of anything of value. Soon after the said archives had been so removed into the said outhouse the said governor, William A. Pile, being ignorant and regardless of the value and importance of the same, gave a portion thereof to the convict prisoners to be used as they might desire, and as to the residue thereof he compelled the said librarian to dispose of the same under a threat of consuming them by fire if they should not

be taken "out of the way;" whereupon by the procurement of the said governor the said residue of the said archives was sold by the said librarian to numerous citizens of Santa Fé, by whom they were used as wrapping papers in trading shops or devoted to other destructive purposes, and thereby the greater part thereof was wholly lost.

In consequence of this wholesale spoliation and destruction of the said archives by Federal officials, as aforesaid, an indignation meeting of prominent citizens of Santa Fé was held in that city on Saturday, the 16th day of April, 1870, to consider the subject of the said outrage, at which meeting a committee to investigate the said sale of the said archives was appointed, consisting of six prominent citizens of the said city, namely, Captain Sena y Baca, Hon.
11 R. H. Tompkins, Hon. José M. Gallegos, Captain Antonio Sena, Samuel Ellison, and Lehman Spiegelberg, and by the efforts of the said meeting and committee many of the said archives, including papers of very great value, both pecuniarily and historically, were recovered and restored to the custody of the government, which recovered and restored archives are now part of the existing archives in charge of the said surveyor general; but your petitioners aver upon their information and belief that all the archives, including the official communications aforesaid, relating to the said Estancia grant and to the authority of Manuel Armijo, the said governor, to make the same, as the ministerial agent of the supreme government of the Republic of Mexico, were lost and destroyed by the said negligent conduct of the respondent The United States of America, except only the said petition of Antonio Sandoval, the said certificate of the comptroller and treasurer, the said granting decree, the said act of juridical possession, and the said subsequent proceedings.

And your petitioners, in consequence of the said spoliation, destruction, and loss of the said archives, are unable at present to state more specifically or definitely the contents of such thereof as relate to the said Estancia grant.

All conditions precedent and subsequent to the said grant at any time incumbent upon the said grantee, Antonio Sandoval, have been fully performed and discharged.

Your petitioners are in actual occupation and possession, under and by virtue of the said grant and their said acquisition thereof, of all and singular the said granted tract of land, except a comparatively small part thereof now adversely held and claimed by the respondents Eloisa Bergere and A. M. Bergere, her husband, as your petitioners are informed and believe, and the only persons claiming the said tract of land or any part thereof adverse to your peti-
12 tioners and without their lease or permission are, to the best of your petitioners' knowledge, information, and belief, the respondents Eloisa L. Bergere and A. M. Bergere, her husband (claiming for themselves and others whom your petitioners are unable more specifically to describe); Mary J. Otero, Miguel A. Otero, Page Otero, Mamie J. O'Bryan, and Harry J. O'Bryan.

Your petitioners claim the said Estancia land grant as a perfect

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itle vested in them as tenants in common in fee-simple absolute, and they aver that the said Estancia grant by them so claimed was a complete and perfect title before and at the time of the cession of New Mexico to the United States.

The said private land claim has not heretofore been confirmed, considered, or acted upon by Congress or the authorities of the United States, or been heretofore submitted to any authorities constituted by law for the adjustment of land titles within the limits of the territory acquired by the United States from Mexico, or been by any such authorities reported on favorably or recommended for confirmation or authorized to be surveyed except only that, having been submitted, as aforesaid, to the said surveyor general, the same was examined, considered, and approved by that official (Hon. James K. Proudfit) and recommended to Congress for confirmation in and by his report (No. 70) to Congress, dated January 4, 1873, and thereafter the said granted tract of land was surveyed by direction of the said surveyor, and the survey, plat, and field-notes in the premises were approved by him February 20, 1878, and subsequently Hon. George W. Julian, surveyor general, and Hon. William A. J. Sparks, Commissioner of the General Land Office, promulgated adverse opinions on the said private land claim; but your petitioners are advised

13 by counsel and believe the two opinions last aforesaid were not promulgated within the competency or jurisdiction of the two officials last above named or of either thereof.

To the end that the said Estancia land grant may be confirmed, surveyed, and patented to your petitioners, they pray that the validity of their said title and claim and of the said grant may be inquired into and decided by this honorable court, and that they may have all the relief in the premises which the said court is competent to afford and decree by virtue of the act of Congress under which it is organized.

JOEL PARKER WHITNEY,
FRANKLIN H. STORY, *Petitioners.*

JOHN H. KNAEBEL,
Attorney for Petitioners.

(Here follows map marked page 13½.)

14 And be it further remembered that, to wit, on the 24th day of March, A. D. 1893, a summons was issued by the clerk of said court; which said summons, with all endorsements thereon, is as follows, to wit:

15 Form No. 167.

U. S. Court of Private Land Claims.

Summons.

UNITED STATES OF AMERICA, *District of New Mexico,* } ss:

In the U. S. Court of Private Land Claims.

JOEL PARKER WHITNEY ET AL., Plaintiff-, *versus* UNITED STATES, Defendant. } Petition Filed in the Clerk's Office this 1st Day of March, A. D. 1893.

The President of the United States of America to Matt. G. Reynolds, Esq., attorney for the United States before the court of private land claims, Greeting:

You and each of you are hereby notified that an action has been brought in said court by Joel Parker Whitney *et al.*, plaintiff-, against you, as defendant, under the provisions of the act of the Congress of the United States, entitled "An act to establish a court of private land claims and to provide for the settlement of private land claims in certain States and Territories," approved March 3, 1891, and that a copy of the petition of said plaintiff- is herewith attached and served upon you, and that you are required to appear and plead, demur, or answer to the petition filed in said action in said court, within thirty days from the date of service of this summons upon you; and if you fail so to do, the said plaintiff- will take default according to the provisions of the aforesaid act.

Witness the Honorable Joseph R. Reed, chief justice of the court of private land claims, and the seal of the said court, at [SEAL.] the city of Santa Fé, in said district, this 24th day of March, A. D. 1893, and of the Independence of the United States the 117 year.

JAMES H. REEDER, *Clerk.*
By IRENEO L. CHAVES,
Deputy Clerk.

16 [Endorsed:] File 3. Gen. No., 152. U. S. court of private land claims, district of New Mexico. Joel Parker Whitney, plaintiff, *versus* United States of America, defendant. Summons. Filed this 21st day of April, A. D. 1893. James H. Reeder, clerk, by Ireneo L. Chaves, deputy clerk. John H. Knaebel, of Denver, attorney for plaintiff.

Proof of Service.

UNITED STATES OF AMERICA, } ss:
District of New Mexico, }

APRIL 1ST, A. D. 1893.

I hereby certify that I received the within writ on the 1st day of April, A. D. 1893, and that I have personally served the same upon the said defendant, U. S.

This writ therefore returned April 21st, as the law directs, this 21st day of April, A. D. 1893.

TRINIDAD ROMERO, *Marshal,*
By SERAPIO ROMERO, *Deputy Marshal.*

Marshal's Fees.

Service, — defendants, at $2.....	$
Mileage, — miles at 6c., going only.....	
Total.....	$4.00

Paid by —— ——.

Served on me this the 1 day of April, 1893.

MATT. G. REYNOLDS,
U. S. Attorney.

17 And be it further remembered that thereafter, to wit, on the 29th day of December, 1896, an answer was filed in the office of the clerk; which said answer is in the words and figures following, to wit:

18 UNITED STATES OF AMERICA, ss:

In the Court of Private Land Claims, Santa Fé District, August Term, 1896.

JOEL PARKER WHITNEY ET AL., Complainants, *vs.* UNITED STATES, Defendant. } No. 152. Estancia Grant.

Answer.

Comes now the United States, by its attorney, Matt. G. Reynolds, and for answer to the petition filed in the above-entitled cause says:

That as to the several matters and things alleged in said petition defendant has no knowledge or information sufficient to enable it to form a belief as to the truth thereof, and it accordingly denies each and all of said allegations and prays that complainants be put to their proof of the same, as is provided by the act establishing this court.

And this defendant, further answering, denies that the complainant- *is* entitled to the relief or any part thereof in *his* petition alleged and prayed for, and prays the same advantage of this answer as if it had pleaded or demurred to the said petition.

Now, having fully answered, it prays the court that a decree may be entered rejecting the claim for said alleged grant and dismissing the petition and for such other orders as to the court may seem meet and proper and which it may be authorized to make in the premises.

MATT. G. REYNOLDS,
U. S. Attorney.

[Endorsed:] Case No., 152. File No., —. Court of private land claims. Joel Parker Whitney *et al.*, complainant-, *vs.* The United States, defendant. Estancia grant. Answer. Filed in the office of the clerk, court of private land claims, Dec. 29, 1896. Jas. H. Reeder, clerk, by —— ——, deputy. Matt. G. Reynolds, U. S. attorney.

19 And be it further remembered that thereafter, to wit, on the 27th day of October, 1893, an answer was filed in the office of the clerk; which said answer is in the words and figures following, to wit:

20 In the Court of Private Land Claims of the United States.

JOEL PARKER WHITNEY and FRANKLIN H. STORY, Petitioners, *vs.* THE UNITED STATES OF AMERICA ET AL. } Answer.

Joint and several answer of Eloisa L. Bergere, A. M. Bergere, Mary J. Otero, Miguel A. Otero, Page B. Otero, Mamie J. O'Bryan, and her husband, H. J. O'Bryan, in right of his wife and not for himself, by J. D. O'Bryan & James Vroom, their solicitors, to the petition of petitioner-.

The respondents say:

That they have no such knowledge as would justify them in either admitting or denying that Antonio Sandoval, on the seventh day of December, 1845, or at any other time, petitioned Manuel Armijo, the then governor of New Mexico, to grant to him in possession *integram* the tract of land in said petition described, or *my* other piece of land, either in whole or in part, now enclosed within the limits of the Antonio Sandoval grant, so called, but pray for strict proof of the same.

They further say that they are without sufficient knowledge to justify an assent to or a denial of the averment of any such official or any certificate of Jose Serafin Ramirez y Cusamba such as that set out in the petition of petitioner-, but pray that strict proof may be made of the same if such proof be in any manner relevant to this case.

They further aver the little want of knowledge upon which to found any assent or denial to the averment in the petition that the said Manuel Armijo, on December 7th, 1845, or at any other time, made a grant to the said Antonio Sandoval of the lands therein mentioned and described, or to the averment that Jose Baca y Ortiz, justice of the peace of Real de Oro, delivered to the said
21 Sandoval juridical possession of the said tract of land, or had any authority so to do, or whether or not he was such justice of the peace, but pray that strict proof be made of the said grant or the said delivery of possession; and these defendants deny that the said Sandoval, under and by virtue of the said grant, peaceably, openly, continuously, uninterruptedly, and exclusively, from the date of the said grant to July 8th, 1845, or for any period of time, occupied the said land, as in the said petition is averred; but these defendants say that if he occupied any portion of the said land the same was a trespass upon the exclusive property and demesne of the grantees through whom these defendants claim title, as hereafter set forth, to the said land.

And these defendants aver that neither the possession of the said Sandoval nor the subsequent possession of his grantees, Gervacio Nolan, if any there were, or his heirs, or of the petitioners in this suit, was of such an open, exclusive, adverse, or continuous a nature as to be the foundation of any right or title, even by prescription or limitation; but that any such possession was openly resisted by the ancestors of these defendants and by their grantors, the heirs of the said Bartolome Baca, as well as by the said Bartolome Baca, and that the immediate ancestors of these defendants, through their agent and employee, Jesus M. Garcis y Chavrs, were in the actual possession of a great part of the land claimed by these petitioners and claiming possession of the whole tract when these petitioners began their suit in ejectment in the district court of the second district of New Mexico for the county of Bernalillo against said employee and agent, and in the appeal of the said case to the supreme court the judgment of the said district court in favor of the petitioners was reversed, the supreme court saying "that there was nothing on the record in the case to show that there was an actual ouster of
22 the plaintiffs (the petitioners herein) by the defendants, the said Garcia, or any intrusion upon their actual possession, there was nothing to confer jurisdiction on the court."

These defendants do not deny that upon July 12th, 1855, Gervacio Nolan, alias Gervais Nolan, presented his petition to the surveyor general of New Mexico for a confirmation, but these defendants say that what he might have alleged in his said petition as to communications addressed to the said governor by the authorities of the government of Mexico conveying power to make such a grant, and that such communications are or should be in the archives of the Territory of New Mexico, were neither facts nor evidence of facts, as these defendants are informed and believe, and as such are improperly inserted in this petition; and these defendants, upon like information and belief, say that another, one Theodore D. Wheaton, as attorney for complainants, may have filed a subsequent petition

in which he said "that the said Armijo, during the time he was governor, as aforesaid, granted said land by virtue of the authority vested in him by the Mexican government, which authority will appear by the collection of statutes and decrees of the aforesaid government, and also by communications addressed to the aforesaid governor by the authorities of the Mexican government, which said communications are to be found in the archives of the Territory," yet that such a statement is neither proof nor evidence of the existence at any time of any of the communications referred to, and is improperly introduced in this petition as evidence of the existence of such papers or as a fact upon which to introduce secondary evidence of their existence.

And as to the part of the petition that recites in detail the traditions that valuable archives in Santa Fé were supposed to be lost or destroyed, and by implication rather than directly that com-
23 munication from the Mexican government authorizing Governor Armijo to make the grant aforesaid to the said Sandoval, these defendants say that they have been informed and believe, and so state the fact to be, that no such communications ever existed, nor was any authority ever given to the said Armijo to make any grant of land in New Mexico, except only such authority as he possessed under and by virtue of the laws of the sovereign constituent congress of the United Mexican States of August 18, 1824, and the regulations of Nov. 21, 1828, and that in particular he was never authorized by any communication from the Mexican government to make the grant of land aforesaid to Antonio Sandoval.

And, further answering, these defendants say that they are advised and believe that the same Antonio Sandoval mentioned and referred to in the said petition on the 28th of November, 1845, only nine days before the pretended grant set out in the petition filed in this case, had granted to him by the same Governor Armijo a certain large tract of land in New Mexico, called Bosque del Apache, exceeding eleven square leagues in extent, and that this grant was claimed by the said Sandoval, and subsequently confirmed by the Congress of the United States and patent issued March 15, 1877, and that under the laws in force at the times of making the said Bosque del Apache grant, or the Sandoval alleged grant, the said subsequent Sandoval grant, so called, mentioned in the petitioners' petition, was invalid and of no force.

And these defendants, having been so advised and believing, say that the said grant mentioned in the said petition was null and void for the further reason that it does not appear to have been made for colonization, but was in payment for past services.

And that furthermore at the time of the alleged grant the land thereby alleged to be granted as set forth in petitioners' petition was not vacant land, but was the private property of Bar-
24 tolomé Baca and those claiming under him.

And these respondents further say that on February 4th, 1819, Bartolome Baca applied to the then governor of the province of New Mexico for a grant of land in said province; which said application was in words and figures following, to wit:

"His excellency the acting governor:

Bartolomé Baca, captain of the volunteer militia company of cavalry of the village of Albuquerque, residing in the jurisdiction of Tome, before you with the greatest respect and subordination, as by law required, represents:

That he has a number of wool-growing stock, horn cattle and horses, without possessing legitimate property on which to place them together under shepherds, cattle-herders and horse-herders, to have charge of them and secure their preservation, they now roving between different places exposed to all the contingencies which their being so scattered causes.

There being vacant on the other side of the Abo mountain a tract of land which they call the Terreon and which embraces on the north to the Buffalo woods (Monte del Cibolo), on the south to the Crow springs (Ojo del Cuervo), on the east to the springs of water which they call the Estancia springs, and on the west to the said Abo mountains, he prays you to be pleased to grant the same in royal possession in exercise of the powers upon you conferred by His Majesty, in order to establish thereon a permanent ranch or hacienda, which he engages to occupy with his stock, sustaining the same with boys, (mosos) servants, and in armed men (armados) who may defend it against the invasions of the enemies without abandoning it; and he will also, should it be to him possible, open land for cultivation, whether they be irrigable or temporals, for the advancement of agriculture, for, although the watering places it contains are sterile and small, he proposes to improve them with reservoirs and by other expedients which will give them all the yields that may be, and he guaranties that it has no present owner whatever, nor has there ever been any known for it. Therefore he requests you to be pleased to grant his petition in conformity with law, commanding the royal justice of his district to give him legal possession with the corresponding documents and other formalities which are required, whereby he will receive favor, grace, and justice. He declares that this is not in dissimulation and what is necessary, etc.

(Signed) BARTOLOMÉ BACA."

San Fernando, February 4, 1819.

And that on July 2nd, 1819, at *the* Santa Fé, the then governor of the said province granted the petition of the said Bartolome Baca in words and figures following, to wit:

"SANTA FÉ, *July 2nd*, 1819.

As he prays for according to law, with the understanding that no injury results to a third party, but rather stock-raising and cultivation will be enhanced under the conditions asked, Mr. José Garcia de la Mora will proceed to give the possession, designated the limits and officiating duly, which being concluded, he will transmit the expediente to this superior office, so that if it be approved the corresponding testimonio may be ordered to be given to the petitioner.

(Signed) MELGARES."

That afterwards, to wit, on September 12th, 1819, the said José de la Mora placed the said Baca in possession of the land granted to him, as aforesaid, in manner following, to wit:

"In execution of the decree of July 2nd, 1819, I, José Garcia
26 de la Mora, the justice commissioned by Lieutenant Colonel Facundo Melgares, governor of the province of New Mexico, proceeded in company with captain of volunteer militia, Bartolomé Baca, to examine the tract he applies for, and knowing that it is wild land and without injury to a third party, I have placed him in possession in the name of the King. I designated to him as his boundaries on the south the Crow springs (Ojo del Cuerbo), following its range (cordillera) to the Chico springs (Ojo del Chico), on the east to the Pederal hill (Zerro del Pederal), on the north the Buffalo springs (Ojo del Cibolo), on the west the summit of the mountain (altura de la Cierra); the said gentleman remaining acquiescent and grateful to the said magistrate for the benefit done, obligating himself to increase with his intelligence, the limited waters which have been donated to him that his herds may subsist, delivering the whole for your approval, for the satisfaction of the fees which may be enclosed upon them."

"Therefore I transmit this to the superior authority, so that, being seen by you, it may determine as it shall seem just."

JOSE GARCIA DE LA MORA.

Witness:

——— ———.

And that afterwards, during the same year, A. D. 1819, the said expediente was by the said justice of the peace transmitted to the then governor of the said province of New Mexico, and by said governor approved, and that thereupon the corresponding testimonio of the grant was then and there delivered to the said Baca, and that he, at that time, entered into the full and lawful possession of the said land, so as aforesaid granted to him, and that the original of the aforesaid grant papers is on file in the office of the surveyor general for New Mexico, and designated as private land claim No. 126, and

further these respondents say that the said Bartolomé Baca
27 and his heirs continued in the lawful, undisturbed, and peaceable possession of the said tract of land, so as aforesaid granted, until A. D. 1845, and that since that time some of his heirs have continued in the possession of the said tract of land, claiming the whole, and that these respondents are now in said possession of the aforesaid grant, claiming the whole in accordance with the boundaries as designated and fully set forth in the act of juridicial possession hereinbefore more fully set forth, and that the fee of said land is now in these your respondents as the legal representatives of the said Baca.

And these respondents, further answering, say that they are in possession of the said Bartolomé Baca grant, claiming the whole, as legal representatives of the said Bartolomé Baca, claiming all and singular the land embraced within the aforesaid boundaries of the said Baca grant by a complete and perfect title, and that their claim

and right in and to and by the said Bartolomé Baca grant is adverse to the entire claim of these petitioners, and that the said pretended grant, as set forth in the petition in this case filed, conflicts with the boundaries and limits of the said Bartolomé Baca grant, and that these respondents have heretofore and before the filing of the petition in this case filed in this said court their petition praying for the confirmation of the said Bartolomé Baca grant as claimed by them.

Wherefore these respondents pray that the petition filed herein may be dismissed as to these respondents.

J. D. O'BRYAN,
JAMES W. VROOM,
Attorneys for Respondents.

28 STATE OF COLORADO, } ss:
County of Arapahoe, }

James W. Vroom, being duly sworn according to law, on his oath says that he is one of the solicitors for the respondents herein: that the allegations in the above answer are true to the best of his knowledge and belief, and that the reason why this oath is made — deponent and not by the respondents herein is because said respondents are not now in the county of Santa Fé, and cannot be conveniently reached for the purpose of making this oath.

(Signed) JAMES W. VROOM.

Subscribed and sworn to before me this 24th day of October, A. D. 1893.

JOHN S. FLOWER,
Notary Public.

[SEAL.]

My commission expires Feb. 7, 1897.

29 And be it further remembered that thereafter, to wit, on the 3d day of October, 1898, an amended answer was filed in the office of the clerk; which said amended answer is in the words and figures following, to wit:

30 In the Court of Private Land Claims, Santa Fé District.

JOEL PARKER WHITNEY ET AL., Plaintiffs, *vs.* UNITED STATES ET AL., Defendants. } No. 152. Estancia Grant.

Amended Answer.

Now comes the United States, by Matt. G. Reynolds, Esq., its attorney, and reserving at all times all manner of benefit or advantage to itself of exception to the many errors and insufficiencies in the petition in said cause, for answer to said petition says:

I.

That it has no knowledge or information sufficient to enable it to form a belief as to whether or not on the 7th day of December,

A. D. 1845, Antonio Sandoval presented to the then governor of New Mexico, Manuel Armijo, a petition in writing wherein he prayed for a grant of the tract of land described in plaintiffs' petition, nor whether, as alleged in plaintiffs' petition, the said Sandoval submitted to the said governor for his consideration an official certificate of Jose Serafin Ramirez y Casanoba, comptroller of the departmental treasury of New Mexico, and acting treasurer of the same, dated on the 6th day of the same month, nor whether said certificate so presented by said Sandoval was of the tenor and effect set forth in plaintiffs' petition.

II.

That it has no information or knowledge sufficient to enable it to form a belief as to whether on the 7th day of December, A. D. 1845, a grant was made of said land to the said Sandoval upon the terms and in the manner set forth in plaintiffs' petition, or whether
31 or not juridical possession was given, as alleged in plaintiffs' petition; but that if a grant were attempted to be made, as alleged in plaintiffs' petition, by Governor Armijo, the same was without warrant or authority of law and in excess of the powers of said Armijo as governor, and therefore void; that said alleged grant, if made as alleged in plaintiffs' petition, was further void because not made in accordance with law or for the purposes provided by the then existing law, but as a reward for services rendered and money advanced, and that even if said alleged grant was made otherwise in conformity with law, it was and is void for the reason that it assumes to convey a vastly greater amount of land than said governor had authority to grant to any one person.

III.

Defendant, further answering, says that the same Antonio Sandoval mentioned and referred to in said alleged grant did, on the 5th day of November, A. D. 1824, petition the authorities of the then Territory of New Mexico for a grant of one square league at the place called Agua Negra, and that on November 19, 1824, a grant of said one square league was made to the said Antonio Sandoval by the territorial deputation of New Mexico, by and with the advice and concurrence of the political chief, Bartolome Baca; that a claim for said grant of land was filed by said Antonio Sandoval on October 21, 1856, before the surveyor general of New Mexico, and that said claim was, on September 17, 1857, approved by said surveyor general and transmitted to Congress, as reported No. 12, for action in the premises; that on June 21, 1860, an act was passed by Congress confirming said grant to said Antonio Sandoval, said act being in words and figures as follows, to wit:

"CHAPTER CLXVII.

"An act to confirm certain private land claims in the Territory of New Mexico.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the private

land claims in the Territory of New Mexico, as recommended for confirmation by the surveyor general of that Territory, in
32 his letter to the Commissioner of the General Land Office of the twelfth of January, eighteen hundred and fifty-eight, designated as numbers one, three, four, six, eight, nine, twelve, fourteen, fifteen, sixteen, seventeen, and eighteen, * * * be, and they are hereby, confirmed" * * *

* * * * * * *

"SEC. 4. And be it further enacted, That the foregoing confirmation shall only be construed as a quitclaim or relinquishment, on the part of the United States, and shall not affect the adverse rights of any other person or persons whomsoever."

That on the 24th day of November, A. D. 1845, the said Antonio Sandoval presented to the governor of New Mexico a petition for a grant of a certain large tract of land in New Mexico called Bosque del Apache, the same exceeding eleven square leagues in extent; and that on the 28th day of November, A. D. 1845, said grant as prayed for was made to said Antonio Sandoval by Manuel Armijo, the then governor of the department of New Mexico, and juridical possession thereof was given to said Sandoval on the 7th day of March, A. D. 1846. Said petition, grant, and act of possession are in words and figures as follows, to wit:

"Seal third. [SEAL.] One dollar.

"Years one thousand eight hundred and forty-four and eight hundred and forty-five.

"Citizen Antonio Sandoval, resident of the town of Albuquerque, appealing to the upright justice of Your Excellency in the most approved manner prescribed by law and convenient to me, saving such protests as may be useful and necessary, appears and states that, by virtue of having found on the banks of the Del Norte river, at the point called Bosque del Apache, a tract of uncultivated, waste, and unoccupied land, and without injury to any third party, and as I believe said land to be extremely fertile, with an abundance of water and other requisites necessary for the advancement of agriculture, I proceed to impetrate the benevolence of Your Excellency, that, in the name of our sovereign power of the Mexican nation, you be pleased to grant me possession of said land for cultivation and the raising of cattle and sheep, being pleased to grant me also the following boundaries, which are from what is called El Rancho de Las Vacqs (the cow herd), down the river, on both sides to Valverde, that is to say, following the river, and for pasture on the west and southeast, two leagues in each direction, if Your Excellency, under the laws, sees proper to do so. In view of all which I humbly pray and request Your Excellency to be well pleased to comply with my request, by which I will receive that grace and favor which I sue for. I swear that I am not acting through malice. I protest good faith, costs, and whatever may be necessary, &c.

"ANTONIO SANDOVAL.

"Albuquerque, November 24, 1845."

"SANTA FÉ, *November* 28, 1845.

" In consequence of the analogous and meritorious services rendered to the country by Don Antonio Sandoval, not only personally, but *but* also with his property, in forced loans and in other ways, I have seen proper to grant him the lands he solicits in the name of the supreme government of the Mexican nation, and as this government takes into consideration the benefit the said Sandoval has been to the country, and by virtue of the power conferred upon me by law, I invest him with the grant integrum (unconditionally), with the boundaries and commons for pasture he asks for, free from all and exempt from tax. Therefore the petitioner will present himself to the justice of the peace of Socorro, who will place the petitioner in possession and execute the proper deed.

MAN'L ARMIJO."

"At this place and demarcation of San Miguel del Socorro, belonging to the third district of the department of New Mexico, the seventh day of the month of March of the present year, one thousand eight hundred and forty-six, I, Don Vicente Pino, justice of the peace of said demarcation, acting with instrumental and attending witnesses, with whom I act in the well-known absence of public or national notaries, there being none, according to law, in strict compliance with the decree of his excellency, the governor, bearing date the 28th of November last, I proceeded to the land referred to in the foregoing petition made by Don Antonio Sandoval, resident of the town of Albuquerque, and having inspected it with great amount of care and delicacy, I find it vacant, waste, and unoccupied, and without injury to third parties, as stated in the foregoing petition. Having taken these steps, I proceeded to make known to the petitioner, in the presence of the witnesses, the request he made; and in regard to the land being in a dangerous locality and on the frontier, he should provide the people he would keep there with a sufficiency of firearms, or bows and arrows, in order to defend their persons and property, and also that he should comply with all the rules and regulations provided for other colonists. Having acknowledged that he was duly informed of the above conditions, I took him by the hand and walked with him over said lands. He threw stones, pulled up grass, and cried aloud with great joy, saying, 'Long life to the sovereign congress of the Mexican nation,' taking possession quietly and peaceably. And therefore I, the aforesaid justice of the peace, stated in a clear and audible voice that in the name of the sovereign congress of the nation and without injury to its national reverence nor to the third parties the aforesaid grant was made to him, free of everything and exempt from taxation, specifying as boundaries: On the north a monument of stone and mud, which was erected when Socorro was granted, the two possessions being adjoining, the said monument being the dividing line; on the south, following down the course of the river to where it is intersected by the boundaries of Valverde, being also adjoining; on the east, the two leagues mentioned in the foregoing petition, and on the west, two leagues

more, as therein mentioned; and therefore, in compliance with the instructions of his excellency, the governor, and finding the land will not injure any third party, as aforementioned, I placed the said Sandoval in legitimate possession, fully empowered to use it with free, unincumbered, and general administration, as his legitimate property, and in order that this granting deed may have the force and validity required by law I did and do interpose the authority conferred upon me by law, signing with my aforesaid witnesses on the said day, month, and year; to which I certify.

VICENTE PINO.

Attending:
JOSE ANTONIO BACA Y PINO.
PEDRO VIGIL.

Instrumental:
JOSE ANASTACIO TORRES.
JOSE DIONICIO SILVA.
JUAN BEYTA.

Justice's fees, 26 dollars.
I swear it." [RUBRIC.]

34 That the said Antonio Sandoval in the year 1859 presented said grant to the surveyor general of New Mexico for approval, and that said grant was by said surveyor general of New Mexico, on July 20, 1859, approved to the said Antonio Sandoval, and transmitted to Congress as reported number 35 for its action in the premises, and that said grant was confirmed by act of Congress, approved June 21, 1860, to said Antonio Sandoval, the said act of confirmation being in words and figures as follows, to wit:

"CHAPTER CLXVII.

"An act to confirm certain private land claims in the Territory of New Mexico.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. * * *"

* * * * * * *

"SEC. 3. And be it further enacted, That private land claims in the Territory of New Mexico, as recommended for confirmation by said surveyor general in his report and abstract marked Exhibit A, as communicated to Congress by the Secretary of the Interior in his letter dated the third day of February, eighteen hundred and sixty, and numbered from twenty to thirty-eight both inclusive, be, and the same are hereby, confirmed, with the exception of the claim numbered twenty-six, in the name of Juan Vigil, which claim numbered twenty-six is not confirmed.

"SEC. 4. And be it further enacted, That the foregoing confirmation shall only be construed as a quitclaim or relinquishment on the part of the United States and shall not affect the adverse rights of any other person or persons whomsoever."

Said grant as surveyed and patented pursuant to said confirmation contains 60,117.30 acres, being 11,292.91 acres in excess of eleven square leagues.

Defendant, further answering, says that under the law of Mexico at the date of the making of the grant to said Antonio Sandoval it was not allowed that more than eleven square leagues of land could be united as a property in a single hand, and that the power and authority of the governor of New Mexico to make a grant to said Antonio Sandoval, even if he had such power, was exhausted by the making of the said Agua Negra and Bosque del Apache grants to said Antonio Sandoval, said two grants being in excess of eleven square leagues, as aforesaid, and that the grant sued for by plaintiffs in this case was and is void, as being
35 an attempt by the governor of New Mexico to convey land in excess of the limit imposed by law.

IV.

Defendant, further answering, admits that said tract of land has been surveyed as a private land claim, as alleged in plaintiffs' petition, but denies that said survey correctly shows the extent and boundaries of said grant, but that, on the contrary, the natural object named as the south boundary of said grant is located at least ten miles north of the south boundary as located by said survey, and that the natural object named as the west boundary of said grant is likewise located at least ten miles east of the west boundary as fixed by said survey.

Defendant, further answering, denies that the area of said grant of land is 415,036.56 acres, but, on the contrary, shows that the area included within the natural objects named in said grant when properly located would not exceed half that amount.

V.

Defendant, further answering, says that it believes it is true, as alleged in plaintiffs' petition, that on the 8th day of July, A. D. 1848, the said Antonio Sandoval conveyed the said alleged grant by an instrument of writing to one Gervacio Nolan, and that upon the death of said Nolan the said grant of land descended to his descendants and heirs-at-law, by whom the same was claimed up to the year 1880, as alleged in plaintiffs' petition.

Defendant further says that it believes it is true that on the 12th day of July, A. D. 1855, the said Gervacio Nolan (who was sometimes known by the name of Gervais Nolan), presented to the surveyor general of New Mexico due notice of his said claim to the said granted land and a petition for the confirmation of the said grant, and defendant says it believes it to be true, as alleged in plaintiffs' petition, that the said surveyor general failed to act upon the said petition of the said Gervacio Nolan, but after the death of the
36 latter his widow and heirs-at-law renewed the said application by their petition for confirmation of the said land grant addressed to said surveyor general, which petition last mentioned was prepared and presented, as alleged in plaintiffs' petition.

Defendant, further answering, says that after said petition had been presented to said surveyor general by said Nolan, and while the said petition and that of his widow and heirs-at-law was pending, as aforesaid, before said surveyor general, there was pending before Congress a claim by the said Nolan and his heirs for a grant of a large tract of land situate in what is now known as the State of Colorado, said grant having been made by Manuel Armijo, the same governor who is alleged to have made the grant herein sued for, the date of said grant being December 1, 1843, juridical possession of said grant having been given to the said Gervacio Nolan by one Cornelio Vigil, justice of the peace of the jurisdiction of Taos, on the 15th day of December, A. D. 1843; that after the United States acquired sovereignty under the treaty of Guadalupe Hidalgo by the provisions of the act of July 22, 1854, creating the office of surveyors general of New Mexico, Kansas, and Nebraska, said last-named claim was filed under the provisions of said act; that said claim was, under the provisions of said act, duly recommended to the Congress of the United States by the surveyor general of New Mexico for confirmation, and its reported number to Congress is private land claim numbered forty-eight; that thereafter said claim was continuously prosecuted in the name of the heirs of the said Nolan, and finally, on July 1, 1870, said claim was confirmed by Congress to the extent of eleven square leagues, said act of confirmation being in words and figures as follows, to wit:

"CHAP. CCII.

"An act to confirm the title of the heirs of Gervacio Nolan, de[illegible]sed, to certain lands in the Territory of Colorado.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the grant to Gervacio Nolan, late of the valley of Taos, deceased, approved by the surveyor general of New Mexico, October eighth, eighteen
37 hundred and sixty-one, and designated as number forty-eight in the transcript of private land claims in New Mexico, transmitted to Congress by the Secretary of the Interior on the twelfth day of May, eighteen hundred and sixty-two but being now within the limits of the Territory of Colorado, is hereby confirmed to the extent of eleven square leagues.

SEC. 2. And be it further enacted, That the exterior lines of said claim of eleven square leagues as confirmed by this act, shall be adjusted according to the lines of the public surveys as near as practicable, but in a compact form, and the claims of all actual settlers falling within the limits of the located claim above referred to shall be adjusted to the extent which will embrace their several settlements upon their several claims being established either as pre-emption or homestead according to law, and for the aggregate of the *arcars* (areas) so established under the pre-emption or homestead acts, the heirs of said Nolan, or their legal representatives, shall be entitled to locate a like quantity of public lands, not mineral, according to the lines of the public surveys, and not to exceed one

hundred and sixty acres in one section: Provided, that such location shall be made within the bounds of the original grant by the order of Cornelio Vigil to Gervacio Nolan.

SEC. 3. And be it further enacted, That it shall be the duty of the Commissioner of the General Land Office to cause the lines of the public surveys to be run in the regions where proper location would place the said Nolan claim, and the expense of the same shall be paid out of any moneys in the treasury not otherwise appropriated; but before the confirmation provided for in this act shall become legally effected, the heirs of the said Gervacio Nolan, or their legal representatives, shall pay the cost of so much of said surveys as inures to their benefit respectively, and that all actual settlers whose claims may be adjusted as valid shall have a right to enter their improvements by a strict compliance with the pre-emption or homestead laws.

SEC. 4. And be it further enacted, That upon the adjustment of said claim of the heirs of Gervacio Nolan, according to the provisions of this act, it shall be the duty of the surveyor general of the district to furnish proper approved plats to the said claimants, or their legal representatives, which shall be evidence of title, the same to be done according to such instructions as may be given by the Commissioner of the General Land Office: Provided, however, that when said lands are so confirmed, surveyed and patented, they shall be held and taken to be in full satisfaction of all further claims or demands against the United States.

SEC. 5. And be it further enacted, That immediately upon running the lines provided for in the second section of this act the surveyor general of the district shall notify the said heirs of Gervacio Nolan, or their legal representatives, of the fact of such survey being made, and said claimants shall, within three months after notice of such survey, select and locate their said claims according to the provisions of this act, and shall, within said time, furnish the surveyor general with a description of such location, specifying the lines of the same, and the party failing to make such selection and location in such manner and within such time shall be deemed and held to have abandoned their claim, and their rights and equities under this act shall cease and terminate.

Approved July 1, 1870."

Said land so confirmed was duly surveyed and patented under the provisions of said act of confirmation to the extent of said eleven square leagues. Wherefore defendant says that plaintiffs
38 herein are not entitled to a confirmation of any portion of the land herein sued for, for the reason that the aforementioned act of *of* July 1, 1870, was a final adjudication on the part of the United States of the rights of the said Gervacio Nolan or his heirs and legal representatives in and to all private land claims under the treaty of Guadalupe Hidalgo.

VI.

All material allegations not hereinbefore answered are denied, and it is prayed plaintiffs be put to their proof of all the allegations

in said petition as provided they shall be by the act of Congress establishing this court.

Having fully answered, defendant prays the court that a decree may be entered rejecting the claim for said alleged grant and dismissing the petition, and for such other orders as to the court may seem meet and proper and which it may be authorized to make in the premises.

MATT. G. REYNOLDS,
U. S. Attorney.

39 And be it further remembered that thereafter, to wit, on the 14th day of December, A. D. 1898, the same being a day of the regular December term, 1898, holden at the city of Santa Fé, New Mexico Territory, the above-entitled cause came on for trial. John H. Knaebel, Esq., appeared for the plaintiffs, Joel Parker Whitney *et al.*

Mr. Matthew G. Reynolds, U. S. attorney, appeared for the United States. The trial of this cause not being concluded, the same was resumed on the following days, to wit, the 15th and 16th days of December, 1898, when the same was concluded.

On the trial of said cause the following testimony, oral and documentary, was offered and introduced:

40 For the record.

In the Court of Private Land Claims, Santa Fé, New Mexico, Adjourned September Term, 1898.

JOEL PARKER WHITNEY ET AL.
vs.
UNITED STATES. } No. 152. Estancia Grant.

On December 14th, 1898, the above-entitled case was called up for trial and the following proceedings were had therein in open court:

John H. Knaebel appeared for the plaintiffs.

Matt. G. Reynolds appeared for the Government.

Mr. KNAEBEL: I will first offer in evidence a copy of the original grant papers filed in the office of the surveyor general in the matter of the present title, certified to by Henry M. Atkinson, surveyor general, April 11th, 1884, under his seal of office (marked Plaintiffs' Exhibit A).

In connection with this proof I ask to introduce the original papers referred to in this case, copy of translation, with liberty from the Government to withdraw them (Plaintiffs' Exhibit —).

It is stipulated that counsel for the plaintiffs or the defendant may have the original title papers transmitted to the clerk of the Supreme Court of the United States in case the same shall be taken to that court by appeal from the final decision of this court in this case.

WILLIAM M. TIPTON, sworn on the part of the plaintiffs, testified, upon direct examination by Mr. Knaebel, as follows:

Q. State your name, residence, and official position, Mr. Tipton.

A. My name is William M. Tipton; residence, Santa Fé, New Mexico. I am special agent of the United States court of
41 private land claims and detailed for service in the office of the United States attorney for that court.

Q. For how long a time prior to your present employment were you in the employ of the Government in the office of the surveyor general of New Mexico?

A. For the greater part of sixteen years.

Q. During the time of your employment in the surveyor general's office and during the time of your present employment have you become familiar with the papers pertaining to Spanish and Mexican land claims on file in the office of the surveyor general?

A. Yes, sir; I have.

Q. Can you produce from the custody of the surveyor general the papers relating to the Estancia grant now in controversy—the original papers?

A. I have those papers here.

Q. Please look at Plaintiffs' Exhibit A, already introduced in evidence, purporting to be a copy and translation of the papers on file in the office of the surveyor general, and, in the order in which the certified translations of the originals appear in this Exhibit A, please to produce the originals.

A. The first document forming a part of the certified copy handed me appears in the files of the Estancia grant in the surveyor general's office as document number 1, the original of which I have here (Plaintiffs' Exhibit No. 1 for identification).

Q. Is that original in Spanish or English?

A. It is in English. It is a notice that Gervacio Nolan made, under the act of 1854, informing the surveyor general of the fact that he makes claim to this land. The next document appearing in the certified copy is a translation of a document which appears in the surveyor general's files as document B, the original being in Spanish. That is certified by Jose Serafin Ramirez y Casa-
42 noba, comptroller of the departmental treasury of New Mexico, in regard to the loaning of certain sums of money by Antonio Sandoval to the departmental treasury (Plaintiffs' Exhibit No. 2 for identification). I have also a translation of Plaintiffs' Exhibit No. 2, which appears as number 8 in the files of the surveyor general's office (Plaintiffs' Exhibit Number 2 A). The next paper following the order of the certified copy is a petition by Antonio Sandoval and a marginal order or decree, signed by Manuel Armijo, both being in Spanish; which document is marked in the files of the surveyor general's office in this case as letter A (Plaintiffs' Exhibit Number 3 A for identification).

Q. Please look at the signatures on the original Spanish document, marked number 3 for identification, and state whether you are familiar with those signatures and what they are.

A. There are but two signatures on the paper in question, the one being that of Antonio Sandoval, and the other that of Manuel Armijo, and I am familiar with both of them.

Q. What is your opinion as to their genuineness and authenticity?

A. I think they are both genuine. The next paper is a translation in English of a document just offered as Plaintiffs' Exhibit Number 3. This translation is marked in the surveyor general's files as document number 7 in this case (Plaintiffs' Exhibit 3 A). The next paper is the act of possession, marked on the files of the surveyor general's office as letter C; it is in Spanish (Plaintiffs' Exhibit Number 4 A for identification).

Q. Do you know the signature of the alcalde on this instrument?

A. I do not know it. The next paper is the translation of the act of possession in English, marked in the surveyor general's files as number 9 (Plaintiffs' Exhibit Number 4 A for identification).

43 The next document is a transfer signed by Antonio Sandoval to Gervasio Nolan of the property in question; which paper is marked on the surveyor general's files as letter D in Spanish (Plaintiffs' Exhibit Number 5).

Q. Look at the signature on the original Spanish instrument marked for identification as Plaintiffs' Exhibit 5 and state whether or not in your opinion it is a genuine signature of Antonio Sandoval, with his rubrica.

A. I believe it is. The next document is a translation of the document just presented, being marked on the files of the surveyor general's office as number 11 (Plaintiffs' Exhibit 5 A for identification). The next document is in English and is a notice of the heirs of Gervasio Nolan, or an amended petition, and is designated on the files of the surveyor general's office as number 2 (Plaintiffs' Exhibit *B*umber 6 for identification). The next document is in English and is the testimony of Pablo Delgado, designated on the surveyor general's files as number 13 (Plaintiffs' Exhibit Number 7 for identification). The next document is a lease by Jarvis Nolan to R. Beach; this document is in English and is designated in the surveyor general's files as number 12 (Plaintiffs' Exhibit Number 8 for identification). The next document is the decision of the surveyor general on the claim, being in English and being designated as document number 22 in the surveyor general's files (Plaintiffs' Exhibit Number 9 for identification).

Q. Who was Antonio Sandoval, so far as you know from your historical and official familiarity with official personages in New Mexico?

A. I know nothing about him of my own knowledge, except such information as I have derived from the archives of New Mexico and from conversation with people here in the Territory; all I know about him is hearsay.

44 Q. According to that information, what was his official position?

A. At one time he was a man of great prominence and considerable wealth in New Mexico, and at one period he was a prefect; I do not remember exactly what date it was. He lived, I think, until

early in the '60's, if I remember rightly, according to some documents I saw at Barelas, and at the time of his death left a very large estate for those times, the probate of which is in the records of Bernalillio county.

FRANCISCO DELGADO, sworn on the part of the plaintiff, testified, upon direct examination by Mr. Knaebel, as follows:

Q. What is your name, age, and residence and employment?

A. My name is Francisco Delgado; my age, forty-one years; my occupation at the present time, I am employed in the office of the United States attorney for the court of private land claims, Santa Fé, New Mexico.

Q. Who was Pablo Delgado?

A. Pablo Delgado was a brother of my father, Fernando Delgado.

Q. Is he living or dead?

A. He is dead.

Q. When did he die about?

A. He died about two years before my father died; my father died in 1873.

Q. Was the Delgado family connected by marriage or otherwise with the family of the late Gervasio Nolan?

A. Yes, sir.

Q. Please look at this original deed purporting to have been made between Maria de los Dolores y Nolan, Francisco Nolan, and others to Joel P. Whitney, and state who were the women therein mentioned respectively as Marie Manuelita Martina Delgado de Baca, wife of Francisco C. de Baca, and Maria Erinea Delgado de Romero, wife of Margarito Romero?

A. Both of the two ladies mentioned are daughters of Don Pablo Delgado.

Q. Were they descendants of Gervasio Nolan?

A. Yes, sir; Don Pablo Delgado was married first to a Nolan and had these two daughters.

45 Q. First to a daughter of Gervasio Nolan, and these two girls were the granddaughters of Gervasio Nolan?

A. Yes, sir.

Q. I offer a copy of a deed of conveyance bearing date of the 23rd of September, 1880, between Maria de los Dolores Lolanda y Nolan, Fernando Nolan and Julianita Nolan, his wife; Eugenio Nolan, Antonio Nolan and Andrea Nolan, his wife; Franciso Nolan, Maria Manuelita Martin Delgado y Baca, Francisco C. de Baca, her husband; Maria Erinea Delgado y Romero and Margarito Romero, her husband, to Joel P. Whitney, in consideration of $27,500.00, conveying the premises in question and recorded October 2nd, 1880, and certified to be a correct copy from the record in Book A 4, page 485 to 489, by Manuel R. Otero, probate clerk of Valencia county, New Mexico, and under the seal of the probate court of that county (Plaintiffs' Exhibit B). With reference to exhibits marked for identification from No. 1 to and including No. 9, I offer these originals

in evidence, but ask to substitute the certified copies which are already in evidence, so that the originals may be withdrawn at the convenience of the Government.

Mr. REYNOLDS: So far as they are concerned, I want to interpose an objection to the introduction of the original title papers and certified copies representing them for the reason that they are produced from private hands and do not purport to be *testimonios* and do not show in themselves nor has any evidence been introduced that their attempted disposition was ever made a matter of record in the archives of the department of New Mexico, nor is there any connection shown that the archives have been lost or destroyed; second, that the genuineness of the signature of the alcalde to the act of possession has not been established, and, in addition, the Spanish
46 title papers, consisting of the petition of Antonio Sandoval, the marginal order or decree by Governor Armijo, and the act of possession by the alcalde, Jose Baca y Ortiz, purporting on their faces to be originals, are not in the proper custody, nor is their absence from the archives and in the custody of the plaintiffs accounted for if they ever had been in the archives.

WILLIAM M. TIPTON, recalled by the plaintiffs for further direct examination, testified as follows:

Q. When did you first become connected with the surveyor general's office for New Mexico?

A. In the spring of 1876.

Q. You stated that during the time of your connection with the surveyor general's office, and afterwards, during your employment as special agent of the Government, you became familiar with the archives kept in the office of the surveyor general. Please to state whether you have ever seen or have been able to find in the archives of the Government kept in the office of the surveyor general any record by Armijo or by his secretary of the grants made by him or signed by him.

A. I have no recollection of ever having seen any such record.

Q. In your opinion, if such record existed in the archives during the time of your connection with the surveyor general's office or your employment as special agent of the Government, would you probably have encountered it in your examinations of these archives?

A. Yes, sir; I would.

Q. State whether the archives of the Government of the United States derived from the antecedent governments appear to have been kept in complete form without disappearance, peculation, or loss of archives kept by our Government.

A. These archives, as far as I am acquainted with them, are as complete now as they were when I first became acquainted
47 with them, which was nearly twenty-three years ago, and I have no personal knowledge that would enable me to state as to whether anything was missing from them or not. I know nothing about their condition prior to the spring of 1876 of my own knowledge.

Q. Has any book of records pertaining to Spanish and Mexican land grants which ought to be now in the surveyor general's office disappeared mysteriously from that office during the time that you have been acquainted with its affairs?

A. I believe there was. I had forgotten about the disappearance of a book there along about 1879 or 1880. There was a book in the surveyor general's office, I believe, that disappeared, and, so far as I know, it has never been recovered.

Q. Did you ever examine that book enough to tell of its general character?

A. I cannot answer that positively.

Q. To the best of your recollection?

A. It is very likely that I had examined the book to a greater or less extent, because I had examined other books of the same character, but I do not recollect now whether I ever made such an examination as would enable me to state positively that I ever did.

Q. Is it the best of your recollection that that book was a record?

A. I know what it purported to be, but I do not know that I know that from having examined it. I know it was a matter of common understanding among the employees of the office as to what it was.

Q. What did it purport to be?

A. I understood that it was a book which had been kept after the acquisition of this Territory by the United States, in which documents in relation to lands were recorded in compliance with some provision of what was known as the Kearny Code, which required persons to present their documents to land to the recorder to have them copied in books and preserved.

48 Q. Do you have any official information as to the disappearance of the archives from the custody of the United States since the acquisition of this Territory? I refer to archives pertaining to land titles derived from Spain and Mexico.

A. I know what has been a matter of common talk here in the Territory. I do not know that I have any official information about it. I do not know that I know exactly what you mean by official information.

Q. Repeat the question, omitting the adjective "official."

A. I know what I have heard stated by various persons claiming to have personal knowledge of the disappearance of archives belonging to New Mexico, if that is the kind of information that you want.

Q. Well, if it is the best you have got I would like to hear it.

A. I have heard it stated that some documents belonging to the archives of the Territory were destroyed in the year 1837, at the time of the revolution which resulted in the death of General Peres, who was then the governor of New Mexico, and I have also heard it stated that during the administration of Governor Pyle, who was governor somewhere about 1870, some of the archives of the Territory were destroyed by fire and some were sold to different persons and scattered about the town here.

Q. From the time of your first connection with the office of the surveyor general down to the present time have you had any knowl-

edge or information of the restoration of archives to the Government, which archives had previously been lost or mislaid?

A. I have knowledge of the restoration of one book to the custody of the surveyor general's office of this Territory. As far as I know, that book had never been in the custody of that office.

49 Q. It was a governmental book?

A. From its character, it was a book which could properly be only in the custody of the territorial officials.

Q. To what subject did it pertain?

A. It pertains to land grants and to other documents affecting land titles.

Q. Was any investigation made as to the means by which that book had been removed from the custody of the Government?

A. Yes; there was some.

Q. What was the result of that investigation?

A. Well, the conclusion was arrived at that this book was a book which had probably been disposed of by Governor Pile at the time he disposed of other papers belonging to the Territory.

Q. Was that a book of records?

A. It was a book in which documents in regard to lands were recorded, and the same kind of a book, as I understand, as the one that disappeared years ago from the surveyor general's office and which has not been recovered.

Q. Mr. Tipton, have you produced into court all the archives or other papers pertaining to the title of the Estancia grant now in controversy which are to be found, so far as you know, in the office of the surveyor general of New Mexico?

A. I have not produced any here. Some have been handed me about which I was asked, and I have no recollection just now of ever having seen any other papers affecting the title of that property.

Q. Is it your opinion that there were no others in the archives in the possession of the surveyor general?

A. To the best of my knowledge there are none.

Cross-examination by Mr. REYNOLDS:

Q. This record book, the disappearance of which occurred in
50 about 1879, what had that been commonly known as down in the surveyor general's office?

A. It was commonly called and known as book, letter B.

Q. How many of these books were originally in the custody of the surveyor general?

A. Only two to my knowledge, A and B.

Q. Has Book B ever been returned to your knowledge?

A. No, sir; not to my knowledge.

Q. What is the book that was returned to the surveyor general's office?

A. It was marked letter C.

Q. Is it of the same character and purports to contain the same character of records as in Book A?

A. Yes, sir.

Q. Did you ever see Book B?

A. Yes, sir; I saw Book B.

Q. While it was in the office?

A. Yes, sir.

Q. Can you give me the dates covered by that Book B, the period which it covered in its making up?

A. No, sir; I could not.

Q. Did you ever see Book C?

A. Yes, sir.

Q. These books, A, B, and C, as I understand you, were records made purporting to be made up under the provisions of the Kearny Code?

A. That was the understanding in the office.

Q. Did it contain other records save those pertaining to land grants or lands?

A. They contained grants; they contained conveyances to real estate, and I think there are—I am not perfectly certain, but I am under the impression that there are some papers, documents, in regard to controversies about land, but the most of them consisted of copies of either grant papers or deeds to real estate.

Q. These books were prepared under the Kearny Code for the purpose of enabling persons having lands to have their titles recorded and preserved?

A. That is my understanding of it.

51 Q. They were made up under the authority of General Kearny, who was military governor here after the conquest with Mexico?

A. Yes, sir.

Q. Did you ever have occasion to see any book in the surveyor general's office containing a large list of documents, indexes, and of documents in the possession of the territorial secretary, turned over by the former government to the United States Government, commonly called the Vigil Indexes?

A. Yes, sir; I have seen such a book.

Q. Take that book (hands large book to the witness) and look at it and see if that is the fellow.

A. The book handed me is the book to which your question refers.

Q. Have you had occasion to examine that book so that you can describe its purport and contents and the officers and their positions under whom it was compiled and by whom it was compiled?

A. The book purports to be a general index of all the documents from the time of the governments of Spain and Mexico up to the year 1846, and it contains a list of a very large number of papers of many different kinds—some of them are in relation to military matters, others in regard to judicial matters, and a certain portion of the index is set aside for the indexing of the documents in relation to grants and lands.

Q. By whom was that book compiled, or index compiled, if you know?

A. According to an affidavit which is attached to one of its leaves

it was prepared by Antonio B. Vigil and Domingo Fernandez under the direction of Donaciano Vigil, who at that time was the secretary of New Mexico and had charge of the archives and all papers, and purports to have been completed prior to the year 1851.

Q. At that time what was the official position of Donaciano Vigil in the Territory in 1851?

A. According to this affidavit he was secretary of the Terri-

52 tory.

Q. Under the United States?

A. Yes, sir.

Q. How many documents does that index purport to contain?

A. I do not know. I judge from having examined the index it would be impossible to tell. There are certain documents that are described as being marked with certain numbers, and from the description of them it is evident that the one number applied to a large number of papers, or more than one paper; at any rate, to which the same number was given. It would be impossible to tell.

Q. Your conclusion from it, then, is that the number entry on the index would apply in some instances, in a number of instances, to a bundle of papers.

A. Yes; I think that is the case.

Q. You have no means of telling the character of the documents as a rule contained in these bundles?

A. In some cases the description is perfectly plain; in others, it is not. Certain cases simply state on the back so and so, containing documents in relation to such and such matter, not stating how many documents.

Q. Have you ever gone over that index with a view of determining what was in it?

A. In a general way I have. I have gone over that portion of it referring to grants a number of times.

Q. How many numbers or bundles are contained in that index?

A. Well, I could not tell that without a very careful examination on account of the peculiar numbering. The first impression I got of it was that there were ten or twelve thousand different numbered papers, but upon examining it very critically I came to the conclusion that there were less than that. The numbering is not consecutive through the book. It would require a very critical examination to form an accurate opinion about that.

53 Q. In the course of your examination of it in reference to land grants did you ever discover anything referring to the existence in the archives of a record or a paper in relation to the Estancia grant, alleged to have been made to Antonio Sandoval in the year 1845?

A. I could not state positively about that; I do not remember that I have; but it has been a long time since I examined this book, and then it was not with a view to that particular case, so I could not state positively; I could only do that by going over that portion of the index that refers to grants.

Q. How many numbers are there in reference to grants?

A. There are probably five or six hundred entries; I do not mean

that many grants, but documents under the heading referring to grants of lands in different ways.

Q. You say that you have never seen a record in the office of the surveyor general of any grant purporting to have been made by Governor Armijo any time during his incumbency as governor?

A. There are numerous grants down there that he made.

Q. By the term record I mean not only entries in books bound together, but original documents left in the archives purporting on their faces to be original grants of land.

A. Do you mean to distinguish between documents that were filed there from private hands and documents that have always been in the archives so far as the records show?

Q. Yes, sir; I do not have reference to documents that have been produced from private hands and filed by them in various cases. I mean that constitute a part of the archives proper.

A. I have never seen a record in the sense of a book containing grants or memoranda of grants made by Governor Armijo, but
54 as to whether there are any grants purporting to have been made by him among these papers which are called archives in the surveyor general's office in distinction from private land claims filed there, I am not perfectly certain, although I do not recollect ever having seen any such. If there were such a document among the archives, it is possible I might have seen it and forgotten it.

Q. Are there any books or records in the archives containing entries of Armijo's official acts as governor?

A. I have seen several books of that kind. My impression is that they are in the territorial library. I know there are some there; there may be in the surveyor general's office, but my mind is now particularly directed to some that I have seen in the territorial library.

Q. Do you know whether any of them cover the period of 1845 and the period of 1846?

A. I do not remember.

Mr. KNAEBEL: The plaintiffs now call upon the defendant The United States of America to produce from its own custody all archives in its possession showing the acts of Manuel Armijo as governor during the year 1845, and particularly all acts pertaining to grants in which, according to the terms, Antonio Sandoval was a party or concerned. The plaintiffs also call on the said defendant to produce the commission under which Manuel Armijo was acting as governor in 1845, and also the records in its possession and commissions concerning the office of Baca y Ortiz, as justice of the peace of the Real del Oro, at the date of the act of possession, tendered in evidence; also the records of grants made by authority of the supreme executive of Mexico in the year 1845, and particularly the records immediately pertaining to the grants here in question.

55 Mr. REYNOLDS: The United States attorney, for and on behalf of the United States, declines to produce or attempt to

produce the same for the reason that they are not under his custody or control, but that the act under which this court has assumed jurisdiction in this case provides: SECTION 4. That it shall be the duty of the Commissioner of the General Land Office of the United States, the surveyors general of such Territories and States, or the keepers of any public records who may have possession of any records and papers relating to any land grants or claims for land within said States and Territories in relation to which any petition shall be brought under this act, on the application of any person interested, or by the attorney of the United States, to safely transmit such records and papers to said court or to attend in person or by deputy any session thereof when required by said court, and produce such records and papers.

Mr. KNAEBEL: It don't say anything about Governor Pile.

Redirect examination by Mr. KNAEBEL:

Q. Mr. Tipton, does this book respecting which you have been examined by counsel for the Government contain an index of the book of records of grants kept by the Spanish governor, Gaspar Domingo de Mendoza, in or about the year 1742?

A. I do not know.

Q. Have you ever seen such a book in the archives?

A. I do not recollect having seen such a book.

Q. Are you not aware that Governor Gaspar Domingo de Mendoza as well as other governors, according to the recitals in grant papers that have come under your observation, recorded or minuted the grants made by them in official records kept by them?

A. I know that there are statements appearing upon some
56 of the old Spanish grants in the archives here to the effect that note had been made of the grant in what was called a government book.

Q. Have you ever seen that government book?

A. No, sir; not to my recollection.

Q. Do you know whether Governor Pile disposed of it?

A. I do not know.

Q. Do you believe it is in the archives of the surveyor general?

A. I do not believe it is in the archives of the surveyor general.

Q. When was the Kearny Code promulgated?

A. About, I think, in the latter part of 1846.

Q. Didn't that code require holders of title papers to present them to the secretary of the Territory for registration?

A. I am not certain about the language of that requirement; they were required to be presented, as I understand it, to an officer whose duty it was to record them, but as to whether it was the secretary of the Territory I am not certain.

Q. Is it not true, to the best of your knowledge and information, that a very large number of documents pertaining to real estate in New Mexico were presented to the office mentioned in the Kearny Code, and were retained by the Government, and do now appear indexed in the book which you have just examined?

A. I have no knowledge of that kind.

Q. Have you any knowledge to the contrary?

A. No; I do not know that I have any knowledge to the contrary.

Q. Please to explain to the court what you regard as the distinction between an archive and a paper on file in the office of the surveyor general, kept in the custody of the Government as pertaining to official custody, and which you regard as not being an archive.

A. The distinction to which you refer has nothing to do
57 with what I regard. It has been a custom for many years in the surveyor general's office to refer to these documents which were received by the first surveyor general from the territorial archives as archives in distinction from those papers which have been filed in private land claims in that office and which came from the hands of the claimants, so that in the surveyor general's office, when a paper is referred to as being an archive, it is understood to have been one of the documents which were turned over to the Government of the United States by the government of Mexico and subsequently deposited in the office of the surveyor general, and not a document coming from the hands of private parties and filed in a claim against the United States in that office.

Q. In what year was the first surveyor general appointed; in 1854, under the act of Congress of that year?

A. Yes, sir.

Q. And didn't that surveyor general receive into his custody numerous papers that had previously been surrendered by private citizens to the public custody under the requirements of the Kearny Code of 1846?

A. I know absolutely nothing about that.

Q. What do you believe?

A. I never heard it before. I never heard the suggestion.

Q. If private citizens, under the requirements of the Kearny Code of 1846, had delivered into the public custody for the purpose of registration such documents pertaining to lands as required in the Kearny Code, and those documents remained in the official custody of the officer mentioned in the Kearny Code or his successor on the incoming of the surveyor general in 1854 and had been turned over to the custody of surveyor general, would they have been treated as archives and marked and regarded as archives?

A. I think undoubtedly they would.

58 Q. So that if a grant or act of possession or other such paper had been committed to the custody of the Government under the terms of the Kearny Code prior to 1854, that document, although coming from private custody prior to 1854, would now be regarded as an archive of the Government, would it?

A. According to the custom of the office I think it would be; yes, sir.

Q. Does this index to which your attention has been called by the counsel for the United States refer in any case to any bound book or does it refer to single documents and legajos?

A. I cannot state as to whether it refers to any bound book or not.

I never examined it with a view of impressing that on my mind. I know that it does refer to many single documents, and that it refers to some legajos — bundles of documents, and that in other instances it refers to apparently what would be smaller packages than were called legajos, consisting of a number of papers referring to the same thing.

Q. According to the best of your knowledge, information, and belief, based on your experience during the last twenty-two years in these matters of land titles in which the Government has been concerned, can you not say that it is true that the Government officials in many cases have been exceedingly negligent, ignorant, and careless in preserving the public archives and papers committed to the public custody for safe keeping?

A. Do you refer to this negligence taking place during the last twenty-two years?

Q. At any time I am talking about. I refer to negligence whenever it occurred, according to the evidence of it which now appears.

A. I have no doubt prior to the time that I became acquainted with the Spanish archives of New Mexico that some of the
59 officers who had been in charge of them were negligent and permitted their loss to some extent, and I know that that negligence has continued in regard to the documents that were in charge of the Territory of New Mexico. So far as the records of the surveyor general's office are concerned, with the exception of the loss of the one book to which I have already referred, there has never been a scrap of paper lost in that office in twenty-two years that I have known it, referring to Spanish and Mexican grants.

Q. What territorial officers has charge of any papers pertaining to Spanish or Mexican land grants in this Territory, which papers ought to be in the custody of the United States?

A. The Territorial Library has charge of a large number of papers, some of which may refer to lands directly and many of which are useful in the examination of questions arising in this court, but as to whether those documents should be in the custody of the United States I do not express any opinion.

Q. You have an opinion, nevertheless?

A. I do not know that I have on that subject.

Recross-examination by Mr. REYNOLDS:

Q. Were the documents referred to by counsel as having been delivered under the Kearny Code from private individuals, which documents related to land grants or lands for record, endorsed in the ordinary manner in which deeds are usually endorsed showing the date of filing and the book and page in which they were recorded?

A. I have seen a great many of such documents containing endorsements substantially as you describe in your question.

Q. Did you ever see a document that was recorded in any of these books that did not bear such an endorsement?

A. To the best of my knowledge, no.

60 Q. Are there any documents in the office of the surveyor general, to your knowledge, which purport to have been filed

in that office and recorded in any books kept under the Kearny Code, outside of those filed with the surveyor general by private parties claiming lands or for lands, and including those filed by private parties for lands under the law of July 22nd, 1854?

A. I do not recollect any.

Q. Then you have never seen a document in what you have designated the archives which purports to have been filed under the Karney Code for record?

A. Not that I remember.

Redirect examination by Mr. KNAEBEL:

Q. Mr. Tipton, are there numerous instruments in the surveyor's general's office, such as conveyances, wills, inventories in probate proceedings and other documents pertaining to real estate, that have no endorsement on them showing that they had been recorded under the Kearny Code?

A. Yes, sir; there are.

Q. Have you any knowledge whatever as to how such papers came to be filed in the archives and made a part of the archives?

A. The archives in the surveyor general's office, you mean?

Q. Yes, sir.

A. Yes; I understood they were transferred to the surveyor general's office from the secretary of the Territory.

Recross-examination by Mr. REYNOLDS:

Q. So far as your knowledge goes, Mr. Tipton, and your examination, was it the custom of the officers in charge of the archives in making up the Kearny Code records to endorse upon the instruments when they were presented for record the date at which they had been filed?

A. I do not think it was. I think it was the custom, though, to endorse upon them the date upon which they were recorded.

61 Adjourned until tomorrow.

DECEMBER 15TH, 1898—two a. m.

The- resumed the further hearing of said case.

Mr. KNAEBEL: We offer in evidence the testimony of Ira M. Bond in the case of Chaves *versus* The United States, involving the Cubero grant, so far as that testimony relates to the subject of the loss of public archives under the administration of Governor Pile (to be marked Plaintiffs' Exhibit C).

Mr. KNAEBEL: I ask leave, in case any further proof is discovered as to the office and signature of the alcalde who delivered possession of the Estancia grant, to produce it in court.

Plaintiffs rest now.

Mr. REYNOLDS: I offer in evidence all the proceedings had upon this grant presented to the surveyor general under the law of July 22nd, 1854; the supplemental report made by Surveyor General

Julian, and also the report made by Mr. Sparks thereon to Congress when he was Commissioner of the General Land Office, so as to complete the proceedings, if any, and by whom taken, as required by this act, under any other act or authority than the act creating this court (to be marked Defendant's Exhibits A and B, respectively).

Mr. KNAEBEL: As to each of the offers separately the plaintiffs object to any document involved in the offer as being irrelevant and incompetent.

Mr. REYNOLDS: For the purpose of sustaining the allegations contained in the third paragraph of defendant's answer and for the purpose of showing that on November 19th, 1824, a grant of one square league of land was made to Antonio Sandoval by the terri-
62 torial deputation of New Mexico, by and with the advice and concurrence of the political chief, Bartolome Baca, and that on October 21st, 1856, Antonio Sandoval filed before the surveyor general of the Territory of New Mexico under the act of July 22nd, 1854, his claim for said grant and for examination thereon by the surveyor general, and report to Congress for its action thereof; that after the examination by the surveyor general of the claim on September 17th, 1857, he approved the same and transmitted to Congress, together with copies of the papers in relation to the same as provided by law, as reported number 12; that on June 21st, 1860, an act of Congress was passed confirming the same, as appears under the title of "An act confirming certain private land claims in the Territory of New Mexico," to be found in volume 12 of the Statutes at Large of the United States, at page 71. In order that the consideration of this Agua Negra grant to Antonio Sandoval may appear as reported number 12, the Government offers in evidence the petition presented to the territorial deputation, its action thereon, the delivery of possession to Sandoval by Sarracino, the commissioner appointed for that purpose, and the report of the surveyor general recommending the same for confirmation. Under the confirmation said grant has been surveyed and patented.

(To be marked Defendant's Exhibit "C.")

The plaintiffs object to the offer just made on the ground that the instruments and proceedings therein referred to are irrelevant, immaterial, and incompetent; secondly, that neither the doctrine of this court nor that of the Supreme Court of the United States declared in the Hayes case for the Antonio Chaves grant, notwith-
63 standing the wise dissents of Justices Stone, Fuller, and Shiras, the Agua Negra grant was absolutely void in its inception; thirdly, that neither by any action of Antonio Sandoval nor his widow, Ursula Chaves, in asserting claim for the Agua Negra grant before the political department of the United States Government, nor by any action of that Government, the antecedent assigns of the Estancia grant, now in question, could be in any manner bound. Counsel for the plaintiffs admits that so far as the statements of fact contained in the documents referred to and allegations in the answer of the United States under the third paragraph are concerned they are admitted to be true, but as to their legal effect or conclusion no admission is made on behalf of the plaintiffs, ex-

cept, however, counsel for plaintiffs denies that any proceedings in assertion of the Agua Negra grant were taken by Antonio Sandoval before the American authorities, but avers that the said Antonio Sandoval was dead at the time, and that such proceedings were taken by his widow, Ursula Chaves.

Mr. REYNOLDS: The object of the introduction of this testimony on behalf of the United States is to show that Sandoval and those claiming under him had received a grant from the Mexican government of one square league of land and to show the consideration therefor, and to show that the same had been recognized and confirmed and patented by the United States under the treaty of Guadaloupe Hidalgo to those claiming as heirs and legal representatives of the said Sandoval, the original grantee.

Mr. KNAEBEL: The object of the objection of the plaintiffs is to call the court's attention to the fact that Antonio Sandoval received nothing of the kind from the Mexican government.

Mr. REYNOLDS: For the purpose indicated and the offer
64 made under the grant to Sandoval, known as the Agua Negra grant, reported number 12, the Government offers in evidence the petition filed before the surveyor general of New Mexico by Antonio Sandoval, by his attorney, M. Ashurst, in the year 1859, under the act of July 22nd, 1854, claiming what is known as the Bosque del Apache grant, situated now in Socorro county, Territory of New Mexico (to be marked Defendant's Exhibit "D"); also the petition to the governor of New Mexico by Antonio Sandoval, dated November 24th, 1845, petitioning for the same; on the 28th of November, 1845, the act of Governor Armijo thereon, and the act of possession executed by Vicente Pino on the 7th day of March, 1846; also the report of the surveyor general thereon on July 20th, 1859, approving the same and transmitting it to Congress as reported number 35 for its action (to be marked Defendant's Exhibit "E"). Further, that the same was confirmed by an act of Congress approved June 21*th*, 1860, to Antonio Sandoval, by an act entitled An act to confirm certain private land claims in the Territory of New Mexico, volume 12, Statutes at Large of the United States, page 71, marked Defendant's Exhibit F. The Government also offers in evidence the patent under survey and action of confirmation based upon said report of the surveyor general (to be marked Defendant's Exhibit F F).

Mr. KNAEBEL: It is stipulated that the patent need not be copied in the record, but that said land was patented in conformity with the report of the surveyor general and the confirmation by Congress. Such stipulation is subject to the objections interposed by the plaintiffs to the said offer of proof. The plaintiffs object to this offer of proof and to each and all of the instruments and proceedings tendered in evidence under that con-
firmation, on the grounds, first, that the said instruments
65 and proceedings are irrelevant, immaterial, and incompetent; secondly, that the Bosque del Apache grant was one in colonization and exceeded the powers of the governor under the laws of colonization; thirdly, that the Estancia grant, now

in question, was not a grant in colonization; fourthly, that the proceedings looking to the confirmation of the Bosque del Apache grant by our Government were subsequent to the transfer of the Estancia grant to Gervasio Nolan. Counsel for the plaintiffs does not object to the form or mode of proof of these instruments, but to the incompetency and irrelevancy of the evidence sought to be introduced.

Mr. REYNOLDS: The survey and patent pursuant to the aforesaid confirmation contained 60,117.30 acres. The United States offers in evidence the petition filed before the surveyor general of the Territory of New Mexico, under the act of July 22nd, 1854, by John S. Watts, attorney for the heirs of Gervasio Nolan, deceased. The claim was filed on October 2nd, 1860 (to be marked Defendant's Exhibit "G").

Also copy of the petition made by the said Nolan, dated Santa Fé, November 14th, 1843, directed to the governor, asking a grant of land in the valley of the Arkansas (to be marked Defendant's Exhibit "H").

Also the order of reference by Governor Armijo to the prefect, dated December 1st, 1843, for the possession of the same (to be marked Defendant's Exhibit "I").

Also the act of obedience, signed by Archuleta December 8th, 1843 (to be marked Defendant's Exhibit "J").

Also the presentation by Nolan of the same to the justice of the peace, Cornelio Vigil, dated December 9th, 1843 (to be marked Defendant's Exhibit "K").

66 Also the act of possession executed by Vigil the 15th day of December, 1843 (to be marked Defendant's Exhibit "L").

Also the report of the surveyor general, A. P. Wilbur, approving the same and recommending it to Congress for confirmation, dated October 8th, 1861, as reported number 48 (to be marked Defendant's Exhibit "M"). The act of Congress July 1st, 1870, confirming the same to the extent of eleven square leagues, with certain provisos, entitled An act granting to the heirs of Gervasio Nolan certain lands in the Territory of Colorado, volume 16, Statutes at Large of the United States, page 646 (marked Defendant's Ex. N); that under said act of confirmation said lands under the provisions of said act have been surveyed and patented to the extent of eleven square leagues. Said patents are now offered in evidence, but are not set forth in the record for the reason that will hereafter appear by stipulation entered of record.

Mr. KNAEBEL: To the said offer and the instruments and proceedings and each and all of the instruments and proceedings involved and the proceedings involved therein the plaintiffs object on the grounds, first, that the said instruments and proceedings are irrelevant, immaterial, and incompetent; and, secondly, that the Estancia grant, now in question, was vested in the grantee and his assigns as a complete and perfect title, and it was not within the intent or constitutional power of Congress to divest that title by any provisos contained in the act of confirmation of the Estancia grant, and that, in fact, the said act did not even assume to interfere with any prior

vested title. The plaintiffs do not object to the form or mode of proof or any of the said instruments if admitted, but to their evidential irrelevancy, immateriality, and incompetency, and the plaintiffs waive the production of the said letters patent,
67 survey, &c., but say that if the same be admitted the statement of counsel for the Government as to their purport may be accepted with the same effect as if the said instruments had been thoroughly proven. It is admitted on the part of the plaintiffs that the Antonio Sandoval and the Gervasio Nolan referred to in the several offers of proof made by the Government and in each of the several instruments and proceedings mentioned or referred to in such offers are the identical Antonio Sandoval and Gervasio Nolan mentioned and referred to in the evidence heretofore adduced on the part of the plaintiffs.

This is all the testimony that was introduced on this trial.

SANTA FÉ, NEW MEXICO, *December 27th*, 1898.

I hereby certify that the above and foregoing twenty-eight (28) pages contain a full, true, and correct transcript of all the testimony offered on the trial of the above-entitled case in open court.

W. J. McPHERSON,
Official Stenographer.

[Endorsed:] No. 152. Transcript of trial. Filed in the office of the clerk, court of private land claims, Jan. 9, 1898. Jas. H. Reeder, clerk, by —— ——, deputy.

68 (PLAINTIFFS' EXHIBIT 1.)

TERRITORY OF NEW MEXICO, }
County of Santa Fé. }

The undersigned, a resident of the Territory aforesaid and county of Taos, respectfully inform- the surveyor general that he has filed for examination and confirmation in his office a claim to a certain piece or parcel of land situate, lying, and being in the county of Valencia, Territory aforesaid, which said land was granted by Manuel Armijo, governor of said Territory, to Antonio Sandoval on the seventh day of October, 1845; that the said land was granted, as aforesaid, to the said Antonio Sandoval for services rendered to the government of Mexico, as will appear by the document marked No. 1; that the said governor aforesaid granted the said — by virtue of the authority in him vested by the government of Mexico, as will appear by the statutes & collection of decrees of the aforesaid government, and also by communications addressed to the aforesaid governor by the authorities of the aforesaid government of Mexico, which said communications are or should be deposited in the archives of this Territory, and to which reference is made. The boundaries of said piece or parcel of land are as follows: On the north, one league from the Berrendo (deer spring), the said spring being within the boundaries of the said grant; on the south, one league

from the Salt lakes, including said lakes; on the east, the hills and range of mountains of the Pedernal, and on the west, the waters of the Mesteñas.

The said grant of land is situate in the Territory aforesaid and in the county of Valencia, and the possession duly given by the justice of the peace of the Real Del Oro, in the aforesaid year 1845, as will be seen by reference to document marked No. 2.

The undersigned further states that all the right, title, and interest of the said Antonio Sandoval to the aforementioned tract or parcel of land was transferred to the undersigned according to law on the eighth day of the month of July, 1848, as will appear by the document marked No. 3. He further states that he cannot
69 furnish a plat of survey of the aforementioned tract, as no survey has ever been executed.

The undersigned, being the present claimant to the aforesaid tract of land, respectfully requests that a patent may duly issue to him according*ly* to law*s*.

his
GERVACIO x NOLAND.
mark.

Santa Fé, New Mexico, July 12th, 1855.

70 (PLAINTIFFS' EXHIBIT "A.")

Sello tercero. Un peso.

Años de milochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

Exmo. Sor. Gobor.

El C. Antonio Sandoval, vesino dela Villa de Alburquerque, ante la recta Justificasion de V. E. como mas en Dro. haya lugar y al mio convenir pueda salvo las protestas utiles y nesesarias comparesco y digo: Sor. Que avirtud de aser la suma de Treinta y Tantos años q. estoyprestando servicios ala patria, tanto con mi persona, como con mis vienes, como es claro y evidente hta. la epoca presente sin que p*a*. ello haya puesto la menor escusa de ninguna manera, y sin que por esto seme halla dado ninguna recompenza de mis servicios, por lo q. asiendo, merito alo espuesto si acaso huviere lugar p*a*. ello paso a impetrar de la veneyolencia de V. E. se sirva en nombre de nuestro Supremos poderes de la Nasion Mejicana el aserme la consepcion y grasia de consederme por posesion *Vntegrum*. el punto delas lagunas de Sal, demarcandose por linderos asi al Norte una legua del ojo del Berrendo qudando dentro dela possesion el citado ojo del Berrendo, y dela lagunas de sal al Sur otra laguna, por el este los serritos del pedernal, y por el Oeste la agua de las mesteñas, es de entender q. esta peticcion la ago con respecto a estar baldio el Terreno y amanos muertas. y ser sin perjuicio de Tersero, y no Tener donde pasteen mis animales q. son algunos, Con este motivo me indispensable aserlo; y si meresco Tal grasia q. sea á mosion de recompensa alos servicios q. dejo referidos, y por lo Tanto suplico a

V. E. q. si seme ase esta concepcion sea libre y saniada de contri vusion, Por Todo lo cual;

[On margin:] A. V. E.

Rendidam.te pido y suplico se sirva en merito de Justiccia acceder á esta mi solisitud en lo q.e recivire mersed y gracia inpetro. Juro no proceder de malicia en esta causa, protesto la buena Fé constas y lo nesesario. &a.

Alburquerque Dbre. 5. de 1845.

ANT°. SANDOVAL.

71 SANTA FÉ *Dbre.* 7 *de* 1845.

Convensido este Gobierno de los analagos servicios que D. Ant°. Sandoval a hecho y esta asiendo a la Patria; asi en el tiempo que sirva, como em seis años que sirvio desempeñando la Prefactura del 2°. Dis°. con la doctacion de mil quinientos pesos de lo que no sele a pagado ni un medio rial; p.r esto que asiende la suma, de nueve mil pesos, y siendo efectivo lo que consta en la presente Ynsta, y husando de las facultades que me conseden las Leyes, y asi en merito de todo como con justo titulo adquirido, le hago la concepcion del terreno que solisita con todas sus Diminciones y exidos qu pide, para que en nombre del Supremo Gov.no de la Nacion Mejicana, y con mi disposisin lo pueda gosar libre y franco de Toda Pension, y libre de todo senso.

MAN.L. ARMIJO.

[Endorsed:] No. 1. A. File 10.

72 Sello cuarto (sello) una cuartilla.

Para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

Abiltado para los años de 1844 y 1845.

Jose Serafin Ramires y Casanoba Contador de la Tesoreria Departamental. de Nuevo Mejico y Tesorero Ynterino dela misma:

Certifico; a pedim.to del Sr D.n. Antonio Sandobal Ser berdad que hase el espasio de 40, años segun consta de los Rejistros en los Libros de la Tesoreria) que el Sr. D.n. Ant°. esta prestando Serbicios ala Nacion Como Militar y Empleado Cibil: Como asi mismo Consta que ha prestado muchas cantidades de Din°. alas Cajas dela Nacion sin grabamen de un medio Real y que hasta la fhâ. se le estan deviendo Cresidas sumas segun las constancias que obran en esta Oficina y en pódel del Ynteresado prosedentes de sueldos, y prestamos. Y para Consta, ° Estiendo la presente en Santa Fe hoy 6 de Dbre de 1845.

JOSE SERAFIN RAMIRES. [RUBRICA.]

[Endorsed:] B. File 10. Comptroller's certificate.

73 En este punto de la Estansia á los quinse dias del mes de Dbre de este presente año de mil ochosientos cuarenta y cinco: yó José Baca y Ortiz Juez de Páz del Real del oro en obedecimiento

al decreto del Exmo. Sor. Govor sobre la consepcion de terreno que hase libre de todo Senso y franco pasé al espresado terreno en compañia de dos tgos. de mi ass^{a}. ha Demarcar los limites y linderos que se consedieron al impetrante; y haviendo tenido presente al Ciudadano Juan Antonio Aragon que hase la persona de D. Antonio Sandoval le hise ber la peticion q. asia y que para mejor seguridad delos intereses havia de mantener fuerza de hombres con buenas armas por lo q. pueda sobrebenir el que entendido de todo lo referido lo tomé por la mano y dijo en clara y inteligibles Voces que en nombre del Soveran Congrso de la Union se le daba en posecion el espres do terreno el q. tomó quieta y pasificam^{te}. sin contradicion alguna, y tiro piedras árrancó Sacate y dió Voces de alegria diciendo Viva el Soverano Congreso de la Nacion Mejicana: asu consecuencia se le Señalaron los linderos q. son por el Norte una legua del Ojo del Berrendo, quedando dentro de la posecion el sitado ojo, por el Sûr de las lagunas de Sál otra legua quedando tambien dentro las mismas lagunas; por el oriente los Serritos del Pedernal con su cordillera, y por el poniente la agua delas Mesteñas; y por lo tanto haviendo que dado la parte interesada satisfecha y conforme con la gracia yconsesion q. se le ha hecho le estendi el presente documento de posecion para su constancia en todo tiempo y que le sirva de formal titulo; y para su mayor balidacion interpongo la autoridad q. por dro me és conferida, firmandolo en dicho dia mes y año con los tgos. de mi ass^{a}. á falta de Escribano Publico q. no lo hay y en el presente papel comun por la falta del del Selio q. corresponde, pero se obliga la parte el agregarlo aysiado de todo doy fee.

JOSE BACA. [RUBRICA.]

De ass^{a}.:
JOAQUIN SOMOHANO. [RUBRICA.]

De ass^{a}.:
PABLO DELGADO. [RUBRICA.]

Registrado en el Libro letra B, folio 166, y 167: lo que lo
74 que certifico para constancia. Santa Fé, Noviembre 17, de 1849.

DONACIANO VIGIL. [RUBRICA.]
Registrador.

[Endorsed:] No. 2. C. File 10. Posecion de terreno para hacienda en favor del Sr D. Antonio Sandocal. Ano de 1845.

75 (PLAINTIFFS' EXHIBIT "A.")

Translation.

Third seal (seal) one dollar.

Years one thousand eight hundred and forty-four and one thousand eight hundred and forty-five.

Most excellent governor:

I, citizen Antonio Sandoval, resident of the town of Alburquerque before the upright justice of Your Excellency in due legal form appear and state: Sir, that considering that it is now the number of thirty years and more that I am rendering service to the country as well with my person as with my property, as up to this time is clear and evident, without having in any — interposed the least objection thereto, and without having on that account been paid any compensation for my services, wherefore, in view of what has been set forth, I proceed, if I am justified in doing so, to pray that Your Excellency in your benevolence be pleased in the name of the supreme authority of the Mexican nation, to do me the favor and grace to grant me in possession *integram* the Salt Lakes tract, assigning as boundaries toward the north one league from the Berrendo spring, the said Berrendo spring being within the possession, and towards the south from the Salt lakes another league, on the east the little hills of the Pedernal, and on the west the water of the Mesteñas. It is understood that I make this petition because the land is vacant and in a condition of mortmain, as to do so is without prejudice to any third party and because I have not where to pasture my live stock, which is considerable. For this reason it is imperative for me to do so, and if I deserve the favor let it be done in com-
76 pensation for the services I have referred to, and for the same reason I ask Your Excellency that if this grant be made to me, it be free and exempt from tax.

In consideration of all which I humbly ask and pray Your Excellency for the sake of justice to accede to this my prayer whereby I will receive the favor I seek. I declare that I act not in dissimulation in the premises, covenant good faith, to pay costs, and do whatever be necessary, etc.

ANTONIO SANDOVAL.

Alburquerque, December 5, 1845.

SANTA FÉ, *December* 7, 1845.

This government being convinced of the valuable services Don Antonio Sandoval has rendered, and is now rendering the country as well during the time to which he refers as also during the six years he served administering the prefecture of the 2nd district with the salary of one thousand five hundred dollars of which not even a half real has been paid to him, the sum due him amounting to nine thousand dollars, and the statements in this petition being true,

I do, in exercise of the power in me vested by the laws, and also in consideration of all the premises and as a just title acquired, make to him the grant for the land he solicits, with all the dimensions and pasture land he asks, that he may enjoy the same in the
77 name of the supreme government of the Mexican nation and under my concession free and exempt from all tax or tribute.

MANUEL ARMIJO.

Seal fourth (seal) one-fourth real.

For the years one thousand eight hundred and forty and one thousand eight hundred and forty-one.

Qualified for the years 1844 and 1845. (Rubric.)

I, Jose Serafin Ramirez y Casanoba, comptroller of the departmental treasury of New Mexico and acting treasurer of the same, do certify at the request of Antonio Sandoval, that during the period of forty years (as appears from the record of the books of the treasury) Don Antonio has been serving the nation as a military and civil officer. It also appears that he has loaned numerous sums of money to the treasury of the nation without receiving one-half real interest, and that there are now large sums due him, as appears from the entries in this office and the evidences in possession of the parties interested, on account of salaries and loans.

And in testimony thereof I issue this certificate at Santa Fé, this 6th day of December, 1845.

JOSE SERAFIN RAMIREZ.

78 At this place, La Estancia, on the fifteenth day of the month of December in the present year one thousand eight hundred and forty-five: I, Jose Baca y Ortiz, justice of the peace of Real del Ore, in obedience to the decree of the most excellent governor concerning the grant of land he makes exempt and free from all tribute, proceeded to the aforementioned land in company with my two attending witnesses to mark the limits and boundaries which are granted to the petitioner and having caused the citizen Juan Antonio Aragon, representing the person of Antonio Sandoval, to be present, I exhibited to him the petition the latter had made and stated that for the greater security of his interest he should maintain a force of men with good arms to be ready for an emergency, and he being fully informed of the above, I took him by the hand and declared in plain and intelligible words that in the name of the sovereign Congress of the Union the aforesaid land was given to him in possession which he received quietly and peaceably without any objection, and he cast stones, plucked up grass and shouted with joy saying Long live the sovereign Congress of the Mexican nation; whereupon he was shown the boundaries which are on the north one league from the Berrendo spring, the said spring being included in the possession; on the south one league from the Salt lakes, the Salt lakes also being within; on the east the little hills of the Pedernal with its range; and on the west the water of the Mesteñas. Wherefore, the party

interested being satisfied and contented with the favor and concession which has been made to him, I did, in testimony thereof in
79 all time to come, execute to him the present document of possession that it may serve him as formal title, and for its greater validity, I interpose the authority conferred upon me by law, signing the same on said day, month and year with my attending witnesses, for lack of a notary public, there being none, and on this common paper for want of that having the proper seal, the party, however, binding himself to attach it at his expense; to all of which I certify.

JOSE BACA.

Attending:
JOQN. TOMOHANO.

Attending:
PABLO DELGADO.

Recorded in book letter B, pages 166 and 167; to which I certify that it may so appear.

DONACIANO VIGIL, *Recorder.*

Santa Fé, Nov. 17, 1849.

80 (PLAINTIFFS' EXHIBIT 5.)

El Condado de Bernalio Territorio del Nuevo Mejico, alos ocho Dias del, mes de Julio del año de mil ochosientos Cuarenta y ocho, yo el infrascrito livre y voluntariamente, estando en mi pleno y entero Juicio, por el presente, declaro que es mi voluntad dognar con efecto dogno, Libre y Legalmente a mi sovrino Gervasio Nolan, la propiedad delas lagunas de Sal q. me fue dada y consedida por el Gob.or del Departamento de Nuevo Mejico en nombre del Supremo Govierno de Mexico, el dia 7 de Disiembre A. D. 1845, segun lo acredita el anterior Titulo de donasion marcado con letra A: por lo q. Traspaso en la persona del referido Nolan todo el Drô. ausion y senorio q. en dhô. Terreno Tenia para que lo gose como su legitima piedad, cuyos linderos son por el Norte una legua al Norte del ojo del Berrendo, por el Sur se estiende a una legua al Sur delas mismas lagunas de Sal; por el Oriente alos serritos del pedernal; y por el poniente, ala agua de las Mesteñas, y si algo tuvieren mis desendientes y asendientes q. oponer sobre esta dona suplico a los M Magistrados no sean hoydos en Juicio ni fuera del, pues que ási á sido mi voluntad y quiero q. se haga firme y valederá las voses de esta Escritura Traspasada, y que ygualm.te quiero q. gose el citado Nolan el mencionado Terreno libre de senso, Trivuto y poteca ú otra enagenacion, tanto el como su Esposa he hijos herederos y subsesores sin q.e haya quien le ponga pleyto ni emvaraso alguno en ningun tiempo, y para su devida Constancia y sér sierto todo lo agui estipulado lo Signo y firmo hoy dia dela fhâ.

ANTONIO SANDOVAL. [RUBRICA.]

TERRITORIO DE NUEVO MEJICO, }
Condado de Bernalillo. }

Por el presente Certifico q. el Hn. Antonio Sandoval comparecio presente en su propia persona el cual es personalmente conosido del Ynfrascripto Secretario dela corte de Circuito del Condado de Bernalillo por ser la persona cuyo nombre esta firmado arriva de
81 su propio puño y declaro y confieso que el antecedente documento es un acto de su libre voluntad selebrado por el fin y propocito, por el mismo mencionado arriva; y por constancia firmé de mi mano y seloo este certificado en Alvurqq.e a 8.e de Julio A. D. 1848.

[SELLO.] JOSE FELIX BENAVIDEZ,
Secret.° [RUBRICA.]

[Endorsed:] No. 3. D. File 10.

82 (PLAINTIFFS' EXHIBIT 5.)

Translation.

In the county of Bernalillo, Territory of New Mexico, on the eight day of the month of July in the year one thousand eight hundred and forty-eight, I the undersigned, freely and voluntarily, being of complete and sound mind, do hereby, declare that it is my will to donate, as I do in effect donate, freely and legally onto my nephew Gervacio Nolan, the property of the Salt lakes, which was given and granted to me by the governor of the department of New Mexico, in the name of the supreme government of Mexico, on the 7th day of December A. D. 1845, as evidenced by the foregoing deed of grant, marked with the letter "A" in virtue whereof I convey unto the aforesaid Nolan all the right title and dominion held by me in said land, that he may enjoy the same as his lawful property the boundaries of which are: On the north: one league north of the Berrendo spring; on the south: it extends one league south of the said Salt lakes; on the east the little hills of the Pedernal; and on the west to the water of the Mesteñas and if my descendants or ascendants should raise any objection to this donation, I pray the majistrates that they be not heard in court or out of it; for such has been my will and I desire, the words of the instrument of conveyance to be made durable and binding, and I also desire that aforesaid Nolan shall enjoy the said land free from tax, tribute, mortage or other incumbrance, as well himself as his wife, children, heirs, and successors, without there being any one to interpose against him any suit or other opposition at any time. And for the due evidence hereof, and for the truth of all herein stipulated I sign and subscribe this on this the day of its date.

ANTONIO SANDOVAL.

TERRITORY OF NEW MEXICO, }
County of Bernalillo. }

I hereby certify that the Honorable Antonio Sandoval appeared present in his proper person, he being personally known to the

undersigned clerk of the circuit court for the county of Bernalillo to be the person whose name is signed above with his own hand and declared and acknowledged that the foregoing document is an act
of his own free will, executed for the object and purpose men-
83 tioned by him as above, and in testimony I signed with my hand and seal this certificate at Alburquerque the 8th day of July A. D. 1848.

[SEAL.] JOSE FELIX BENAVIDES, *Clerk.*

SURVEYOR GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT.
SANTA FÉ, N. M., *January* 23, 1861.

The foregoing is a correct translation of the original in Spanish on file in this office.

DAV. J. MILLER, *Translator.*

84 (PLAINTIFFS' EXHIBIT 6.)

UNITED STATES OF AMERICA, }
Territory of New Mexico, County of Santa Fé, } ss:

The undersigned, Maria de Los Dolores Noland, widow of Gervais Nolan, for herself and as guardian of her two minor children, Antonio Noland and Francisco Noland; Fernando Noland, Eugenio Noland, Maria Leonore Noland, Maria Manuela Martina Delgado, and Maria Irenea Delgado, the two last being minors, by their guardian, Pablo Delgado, would respectfully represent to the surveyor general of said Territory, by their attorney, Theodore D. Wheaton, that they are the only heirs of said Gervais Noland, now deceased, formally of the county of Taos, in said Territory.

That they, the said heirs, are residents of said Territory; that the said Gervais in his lafetime filed for examination and confirmation a claim to a certain tract of land situated, lying, and being in the county of Valencia, in said Territory, the same having been granted by Manuel Armijo, formerly governor of said Territory, to Antonio Sandoval on the seventh day of *of* October, A. D. 1845.

That the said land was granted as aforesaid to said Antonio Sandoval for services rendered to the Mexican government, as will appear by document marked (N. 1); that the said Armijo during the time he was governor, as aforesaid, granted said land by virtue of the authority vested in him by the Mexican government, which authority will appear by the collection of statutes and decrees of the aforesaid government, and also by communications addressed to the aforesaid governour by the authorities of the Mexican government, which said communications are to be found in the archives of the Territory, and to which reference is here made. The boundaries of
said tract of land are as follows (to wit): On the north, one
85 league from the Berrendo spring, the said spring being within the boundaries of said grant; on the south, one league from the salt lakes, including said lakes; on the east, the range of moun-

tains and hills of the Pedernal; and on the west, the waters of the Mesteñas.

The said grant of land is situated in the Territory aforesaid and in the county of Valencia, and the possession was duly given by the justece of peace of the Real del Oro in the aforesaid year, 1845, as will be seen by reference to document marked No. 2.

The undersigned further state that all the right, title, and interest of the said Antonio Sandoval to the aforesaid tract or parcel of land was legally transferred and conveyed by said Sandoval to said Gervais Noland on the eighth day of the month of July, A. D. 1848, as will appear by the document marked No. 3. They further state that they are unable to furnish a plat of survey of said tract, as such survey has never been made.

The undersigned, being the present owners of the aforesaid tract, respectfully pray that the same be confirmed to them and a patent issue in their favour accordingly.

THOS D. WHEATON,
Att'y for Claimants.

[Endorsed:] File 10. Notice. Heirs of Gervacio Nolan. Claim to land in Valencia county, New Mexico. Amended petition. This document is duly recorded on pages 50 & 51, vol. 4, of Land Claim Records, in office of surveyor general.

86 (PLAINTIFFS' EX. 7.)

ANTONIO SANDOVAL, by Assignee, *vs.* UNITED STATES. } Before Surveyor General.

Pablo Delgado, lawful age, sworn & states:

I know the signature of Man'l Armijo, and the one shown me on doc. No. 1 is genuine, and the signature of Antonio Sandoval on same doc. is also genuine, and at the date of said doc. Manuel Armijo was gov. & commander-in-chief of New Mexico. I was present when the alcalde (Jose Baca) put Sandoval in possession of the land, and all the signatures to doc. C are genuine. The signature of A. Sandoval in doc. No. 3 is genuine. Gervacio Nolan is now dead, but his wife, Maria de los Dolores, is still alive. I know Francisco and Antonio Nolan, sons of said Gervacio and minor children now living in New Mexico.

I know also Fernando and Eugenio Nolan, also Maria Leonor Nolan, children of said Gervais Nolan, residents of this Territory, in the county of Mora. I know Maria Manuela Martina Delgado and Maria Irenea Delgado, minors and grandchildren of said Gervacio Nolan. The above are the only descendants of said Gervacio Nolan, who died about 3 years ago, and intestate.

PABLO DELGADO.

Sworn and subscribed January 10, 1861.

A. P. WILBAR, *Sur. Gen'l.*

87 (PLAINTIFFS' EXHIBIT 8.)

This indenture made the first day of January one thousand eight hundred & fifty between Jarvis Nolan of the first part and Rufus Beach both of Santa Fé of the other part witnesseth that the said party of the first part for and in consideration of the rents & covenants hereinafter contained hath and by these presents doth rent and to farm let to the said party of the second part, all that tra-t of land including the Salt lake in New Mexico about eighty miles southerly from Santa Fé and bounded as follows on the north one league north of the water of the Berrendo, on the south one league south of the Salt lake, on the east by the Flint mountain, on the west by the water of the Mesteñas, according to a deed of the same executed by Antonio Sandoval to the said Nolan dated the eight day of July 1848 in which reference is made to a grant from the governor of New Mexico to said Sandoval bearing date the 7th day of December 1845 with the privilege of occupying and renting to others all or any part of said premises for the term of five years.

To have and to hold the same in as full and ample a man-er as I am intitled to hold the same by the said grant & deed aforesaid unto the said Rufus Beach his heirs and assigns for the term of five years fully to be complete and ended. And the said Biach hereby covenants to occupy said premises for agriculture and procuring salt from the lake and to construct one or more house or houses and corral for the convenience of workman and the herding of stock on the prem-ses and to pay all Government taxes which may be assessed on all such part or parts of said premises as he shall oc-upy, and at the end of said term surrender said premises with all the improvements thereon to said Nolan.

And the said Nolan covenants and agrees that on condition
88 that the said Beach is successful in improving the premises and makes them valuable then the said Beach shall be intitled to the equal half part of the rents & profits of the same for the five years next ensuing the term of this lease.

Witness our hands & seals the day & year above written.

JARVIS NOLAN. [L. S.]
RUFUS BEACH. [L. S.]

Test:
M. ASHURST.
M. F. TULEY.

[Endorsed:] File 10. Jarvis Nolan to R. Beach. Lease, a copy of which I gave to R. Beach. This document is duly recorded on pages 63 & 64, vol. 4, of Land Claim Record, in office of surveyor general.

89 (PLAINTIFFS' EXHIBIT 9.)

ANTONIO SANDOVAL.

La Estancia Tract.

This claim for a grant of land comes before me for recommendation to Congress under the treaty of Guadalupe Hildago (eighth and ninth articles) and the act of Congress, 22 July, 1854, establishing this office.

It was filed in this office July 12, 1855, by Gervacio Nolan, who died in 1858, as assignee of the grantee, Sandoval, and his legal representatives now ask approval and confirmation. Testimony was taken before one of my predecessors in 1861, but no final action taken in the case, on account, as is stated, of divided action and trouble among the heirs and other causes preventing until this time.

The original documents in Spanish, which are genuine beyond all doubt, show that the grant was made by Manuel Armijo, then the lawful and recognized governor of New Mexico under the Republic of Mexico, on the 7th December, 1845, to Antonio Sandoval, in accordance with Sandoval's petition of 5th December, 1845. The petition requests and the governor decrees that the grant be absolute, for value received in services performed for and moneys loaned to the government of Mexico by the said Sandoval, and that it be "free and exempt from all tax and tribute."

On 15th December, 1845, Sandoval was duly placed in possession of the property by Jose Baca, a justice of the peace, and he and his legal representatives have so remained, it is believed, to this time without dispute or question. It is a matter of history and common notoriety that Don Antonio Sandoval was, under the Mexican rule, a man of great activity, wealth, and influence, and that his government owed him for many years large sums of money, which it was either unable or uuwilling to pay him. (See comptroller's certificate in the case.)

The boundaries of the grant are as follows: "Towards the north one league from the Berrendo spring, the said Berrendo spring being within the possession, and towards the south from the Salt lakes another league; on the east the little hill of the Pedernal and on the west the water of the Mesteñas."

The boundary calls are well-known natural objects and the location is certain. No survey of it has been made, but it is
90 reputed to contain about 300,000 acres. On 8th July, 1848, Sandoval deeded the property (see deed in evidence) to Gervacio Nolan, who was his nephew.

I am of opinion that this title is perfect in the legal representatives of Gervacio Nolan, deceased, and recommend that it be confirmed by Congress accordingly.

A complete transcript of the record is herewith submitted.

JAMES K. PROUDFIT,
Surveyor General.

U. S. surveyor general's office, Santa Fé, New Mexico, January 4, 1873.

91 PLAINTIFFS' EXHIBIT B.

This indenture, made and entered into this twenty-third day of September A. D. one thousand eight hundred and eighty by and between Maria de los Dolores Lolanda y Nolan of the county of Mora, Territory of New Mexico, Fernando Nolan and Iulianita Nolan his wife, of the county of Mora, Territory aforesaid, Leonora Nolan of the county of Mora and Territory aforesaid, Eugenio Nolan of the county of Mora and Territory aforesaid, Antonio Nolan and Andrea Nolan his wife, of the county of Mora and Territory aforesaid, Francisco Nolan, of the county of Mora and Territory aforesaid, Maria Manuelita Martina Delgado y Baca, Francisco C. de Baca, her husband, of the county of San Miguel and Territory aforesaid and Maria Erinea Delgado y Romero and Margarito Romero her husband, of the county of San Miguel, Territory aforesaid, parties of the first part, and Joel P. Whitney of the city and county of New York and State of New York, party of the second part: witnesseth, that the said parties of the first part for and in consideration of the sum of twenty-seven thousand five hundred dollars ($27,500) lawful money of the United States, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, remised, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, release, remise, convey and confirm unto the said party of the second part, and to his heirs and assigns forever in fee-simple, all that certain grant or tract of land, situate, lying and being in the county of Valencia in the Territory of New Mexico, and more particularly bounded and described as follows, to wit: Towards the north one league from the Berendo springs, the said Berendo springs being included within the possession and boundaries of said grant and tract of land; on the south one league from the Salt lakes, the said Salt lakes also being within the possession and boundaries of said tract of land; on the east the little hills of
92 the Pedernal with its range; and on the west the waters of the Mestenos—the said grant and tract of land being a certain grant of land known as the Estantia grant or Salt Lakes tract made to one Antonio Sandoval on the seventh day of December A. D. one thousand eight hundred and forty-five by Manuel Armijo then governor of the Mexican Territory of New Mexico, pursuant to the petition of said Sandoval dated on the fifth day of December A. D. one thousand eight hundred and forty-five, and judicial possession thereof given to the said Antonio Sandoval on the fifteenth day of December A. D. one thousand eight hundred and forty-five by José Baca y Ortis then justice of the peace of the Real del Oro which said grant and tract of land was sold and conveyed by the said Sandoval to one Gervacio Nolan on the eighth day of July one thousand eight hundred and forty-eight, and the title papers thereof thereafter in the year one thousand eight hundred and fifty-five presented to the United States surveyor general for the Territory of New Mexico

under and pursuant to the provisions of the act of Congress approved the twenty-second day of July A. D. one thousand eight hundred and fifty-four, and the said grant approved by the said surveyor general on the fourth day of January A. D. one thousand eight hundred and seventy-three, as more fully and at large appears by the original title papers, deed of conveyance, report and papers pertaining to said grant on file in the office of said surveyor general, to which said original title papers and deed, reference is hereby made for further and better description of said grant and tract of land and the boundaries thereof. Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, in law as well as in equity of the said
93 parties of the first part, of, in and to the same, and every part and parcel thereof with the appurtenances.

To have and to hold, the above granted, bargained, sold and described premises with the appurtenances unto the said Joel P. Whitney and his heirs and assigns to and for their own proper use, behoof and benefit forever. And the said parties of the first part for themselves, their heirs, executors and administrators, do covenant and agree to and with the said party of the second part, his heirs, administrators and assigns, that they, the said parties of the first part their heirs, and all and every person or persons whomsoever, lawfully or equitably deriving any estate, right, title or interest of, in or to the hereinbefore granted, bargained, sold and described premises, by, from, under or in trust for them or either of them, shall and will at any time or times hereafter upon the reasonable request and at the proper cost and charges in the law of the said party of the second part, his heirs and assigns, make, do and execute and cause to be made, done and executed all and every such other and further lawful and reasonable acts, conveyances and assurances in the law for the better and more effectually vesting and confirming the premises hereby granted or so intended to be, in and to the said party of the second part, his heirs and assigns forever as by the said party of the second part, his heirs or assigns or his or their counsel, learned in the law, shall be reasonably advised or required. And also the said parties of the first part, for themselves, their heirs, executors, administrators and assigns do covenant and agree to and with the said party of the second part, his heirs, executors, administrators and assigns, that they the said parties of the first part, their heirs, executors, administrators and assigns, the above-described and hereby granted, bargained, sold, and released premises and every part and parcel thereof, with
94 the appurtenances unto the said Joel P. Whitney, his heirs and assigns, against the said parties of the first part, their heirs or any of them and against all and every person or persons whomsoever, claiming or to claim the same, shall and will warrant, and by these presents forever defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

MARIA DE LOS DOLORES
her
LOLANDA NOLAN x
mark.
FERNANDO NOLAN.
her
IULIAZATA x NOLAN.
mark.
EUGENIO NOLAN.
ANTON. NOLAN.
her
ANDREA x NOLAN.
mark.
her
LEONOR x NOLAN.
mark.
FRANCISCO NOLAN.
FRANCO. C. DE BACA.
MARIA MANUEL MARTINA
DELGADO DE BACA.
MARGARITO ROMERO.
IRENEA DELGADO Y ROMERO.

Signed, sealed, and delivered—
MARCELINO ABEITIA.

TERRITORY OF NEW MEXICO, }
County of San Miguel. }

On this the twenty-third day of September, A. D. one thousand eight hundred and eighty, before me, the undersigned, personally appeared Maria de los Dolores Lolanda y Nolan, Fernando Nolan, Iulianita Nolan, Eugenio Nolan, Antonio Nolan, Andrea Nolan, Leonora Nolan, Francisco Nolan, to me well known to be the persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and acknowledged that they signed, sealed, and executed the same for the uses and purposes therein mentioned, and the said Maria de los Dolores Lolanda y Nolan, wife of Gervacio Nolan, deceased, and the said Iulanita Nolan, wife of Fernando Nolan, and the said Andrea Nolan, wife of Antonio Nolan, having been by me examined separate and apart from their said husbands, and the contents of said deed having been by me
95 first read and explained to them and each of them, they each acknowledged that they signed, sealed, and executed the same as their own act and deed, freely, voluntarily, and without compulsion or the illicit influence of their said husbands respectively.

In witness whereof I hereunto set my hand and seal the day and year last above written.

T. B. MILLS,
Notary Public.

TERRITORY OF NEW MEXICO, }
County of San Miguel. }

On this the twenty-third day of September, A. D. one thousand eight hundred and eighty, before me, the undersigned, personally appeared Maria Manuelita Martina Delgado y Baca and her husband, Francisco C. De Baca; Maria Irenea Delgado y Romero and her husband, Margarito Romero, to me well known to be the persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and acknowledged that they signed, sealed, and executed the same for the uses and purposes therein set forth, and the said Maria Manuelita Martina Delgado y Baca and Maria Irenea Delgado y Romero having been before me examined separate and apart from their said husbands, and the contents of said deed having been by me first read and explained to them and each of them, they each acknowledged that they signed, sealed, and executed the same as their own act and deed, freely, voluntarily, and without compulsion or the illicit influence of their said husbands respectively.

In witness whereof I have hereunto set my hand and seal the day and year last above written.

T. B. MILLS,
Notary Public.

Recorded this 2nd day of October, A. D. 1880.
MANUEL R OTERO,
Clerk and ex Officio Recorder.

96 I certify that the foregoing is a true and correct copy from Record Book "A" 4, pages 485 to 489, both inclusive.
Los Lunas, N. M., November 21st, 1883.
MANUEL R. OTERO,
Probate Clerk,
[SEAL.] By PAUL D. STONE, *Deputy.*

[Endorsed:] Certified copy of deed of Estantia grant to J. P. Whitney. Sept. 23, 1880.

97 Know all men by these presents: That I, Joel P. Whitney of the city and county of New York and State of New York, in consideration of thirty thousand dollars paid by Franklin H. Story, of Boston, county of Suffolk, Commonwealth of Massachusetts, the receipt whereof is hereby acknowledged, do hereby remise, release and forever quitclaim unto the said Story one undivided half part of the following-described premises, situated and being in the county of Valencia in the Territory of New Mexico, and bounded as follows, to wit: Towards the north one league from the Berendo springs, the said Berendo springs being included within the possession and boundaries of said grant and tract of land; on the south one league from the Salt lakes, the said Salt lakes also being included within the possession and boundaries of said grant and tract of land; on the east the little hills of the Pedernal with its range; and on the

west the waters of the Mestenos; the said grant and tract of land being a certain grant of land known as the Estantia grant or the Salt Lakes tract, made to one Antonio Sandoval on the seventh day of December, A. D. one thousand eight hundred and forty-five, by Manuel Armijo, then governor of the Mexican territory of New Mexico, juridical possession thereof being taken by said Sandoval on the fifteenth day of December, A. D. one thousand eight hundred and forty-five, and by said Sandoval sold and conveyed to one Gervacio Nolan on the eighth day of July, A. D. one thousand eight hundred and forty-eight, the title papers thereto having been approved by the surveyor general of the Territory of New Mexico on the fourth day of January, A. D. one thousand eight hundred and seventy-three, and to me sold and conveyed by the heirs of said Nolan in fee-simple by deed dated the twenty-third day of September, A. D. one thousand eight hundred and eighty, and recorded in the county records of Valencia county, Territory of New Mexico, at Belen *in* the second day of October, A. D. one thousand eight hundred
98 and eighty, all of which above-mentioned transaction appears more fully and at large, by and in the original title papers, deed of conveyance, report and papers pertaining to said grant, on file in the office of said surveyor general, and — which said original title papers, deed of conveyance, report and papers, reference is hereby made for further and better description of said grant and tract of land and the boundaries thereof.

To have and to hold, the above-granted premises, with all the privileges and appurtenances to the same belonging to the said Franklin H. Story, of Boston aforesaid, his heirs and assigns, to their own use and behoof forever. And I, the said grantor, for me and my heirs, executors and administrators do hereby covenant with the said grantee and his heirs and assigns that the released premises are free from all incumbrances made or suffered by me, and that I will and my heirs, executors and administrators shall warrant and defend the same to the said grantee and his heirs and assigns forever against the lawful claims and demands of all persons claiming by, through or under me, but against none other.

In witness whereof, I set my hand and seal at Boston aforesaid this sixth day of November A. D. one thousand eight hundred and eighty.

J. P. WHITNEY. [SEAL.]

Signed, sealed, and delivered in presence of—
SAMUEL JENNISON.
THOMAS HARNEY.

COMMONWEALTH OF MASSACHUSETTS, } ss:
County of Suffolk, City of Boston, }

On this sixth day of November, A. D. 1880, before me, the undersigned, Samuel Jennison, a commissioner of the Territory of New Mexico, residing in the city of Boston, duly commissioned and qualified by the governor and under the laws of said Territory to take the acknowledgements of deeds, etc., to be used and recorded therein,

personally came Joel P. Whitney, to me personally known to
99 be the same person whose name is signed to the foregoing instrument and who is party thereto, and acknowledged that he signed, sealed, and executed the same freely and voluntarily for the purposes therein mentioned.

In witness whereof I have hereunto set my hand and official seal, at said city of Boston, this 6th day of November, A. D. 1880.

[SEAL.] SAMUEL JENNISON,
Commissioner for New Mexico in Boston.

Recorded this 21st day of December, A. D. 1880.

MANUEL R. OTERO,
Clerk and Recorder.

I hereby certify that the foregoing is a true copy from Record Book "A" 4, pages 498, 499, and 500.

MANUEL R. OTERO,
Probate Clerk,

[SEAL.] By PAUL D. STONE, *Deputy.*

Los Lunas, N. M., November 22, 1883.

[Endorsed:] Estancia land grant. Certified copy of deed from J. P. Whitney to F. H. Story. Nov. 6, 1880.

100 (PLAINTIFFS' EXHIBIT "C.")

IRA M. BOND, a witness on behalf of defendant, was introduced and testifies as follows:

By Mr. REYNOLDS, U. S. attorney:

Q. State your name, age, and occupation.

A. Ira M. Bond; Albuquerque; deputy sheriff.

Q. How long have you resided in the Territory of New Mexico?

A. Since 1869.

Q. What, if any, official position did you occupy in this Territory in 1869 and 1870?

A. I was appointed by Governor Pile territorial librarian.

Q. Now, state to the court, and state it fully, the history of the destruction or disposition of a part of a records or archives, or whatever they may be called, that were in the possession of the territorial librarian in the years 1869 and 1870.

A. Adjoining the governor's office, in the rear, I had—it was directly opposite the governor. Across the hall there were a large amount of refuse papers. It seemed the room had been used as an outhouse to a large extent. The pungent fumes that arose from the room was very offensive to the governor, and he ordered me to take the papers out in the ward and burn them. As the books in the library were at that time placed down on the dirt floor, I suggested that if we could sell a few of those old papers and get enough money we might put a floor in part of the library and save some of the things, as we

had no shelving, and we tried to get subscription from some of the citizens to get some shelving, but did not succeed. The governor told me to see if I could dispose of some of those papers for that purpose, or else burn them. I went around to some of the merchants. They said that they were valueless, but they could use them for covering—wrapping. One merchant said he would take a barrel of them. I sent one barrel over to his store, and he used some of them, I believe, for wrapping up some purchases. In a few hours some of the papers got out in town. People receiving them noted the writing on them, and it created quite a talk. Some of the papers had some old dates. After several hours spoke to me again and said I had better recover the papers. I replied I would try and get them back again, and I went and got the papers and took them back. They were preserved. Later, I understand, the legislature passed
101 an act to have them preserved and translated. I don't know anything further.

Q. Were there more than one barrel of them sold?

A. About a barrel, and I think we got back all except four or five pounds of them.

Q. What was the general nature and character of these papers?

A. In my opinion, as clerk of a Missouri legislature, I have seen thousands of pounds of such thrown away. It was between the governor's office and the legislative hall, and I think it was the same class of material.

Q. Do you know whether there was any public grants—land grants—amongst them?

A. I saw nothing of that kind or nature. They seemed mostly legislative printed bills—some that had been introduced and printed, but never passed—and some refuse matter from the governor's office.

Q. Then you think you got most of the papers that you disposed of back?

A. Yes, sir; all except a very few pounds. I never heard of any person having received any but what I recovered them.

Q. During this excitement over the disposal of the papers, after you had recovered part of them back, was there a discussion or any claim made by anybody that any land grants or titles to lands from the Government were missing?

A. I never heard of anything of that kind at all. I know they were talking that they were papers of old dates, but I put no special value on them. They were in Spanish. Governor Pile ordered me to burn them, and I suggested that we try to dispose of a few——

Q. Did you have a suit in the district court of the Territory to recover some of them?

A. It was so long ago I don't remember about it. Yes, sir.

Cross-examination by Mr. FROST, plaintiffs' attorney:

Q. Did you understand the Spanish language in 1869?

A. No, sir.

Q. These papers were in the Spanish language?

A. Those that I paid any attention to were in the Spanish language.

Q. Were they written or printed?

A. Some printed; some written.

Q. Did they look old or new?

A. Some looked old; some practically new.

Q. Didn't I understand you to say that the legislature recently made an appropriation to have these papers examined—some of those that were left?

A. Those were papers which I have heard of. I don't know it of my own knowledge.

Q. What was the cause of all that excitement at that time about these papers?

A. I only heard that some of the papers had old dates on them.

Q. The people deemed it such a matter as to condemn the action of the governor. You remember that, don't you?

102 A. I don't remember that. I heard talk around town.

Q. But you do remember that you got back all but a few pounds of those papers?

A. I think I got back all, with the exception of three or four pounds.

Q. How long ago was that date? You say you don't remember anything about the indignation meeting, but you do remember about the three or four pounds?

A. Yes, sir.

Q. If an indignation meeting had been held about that time would you have known anything about it?

A. It might have been held.

Q. You have been a newspaper man for a good many years, and you are pretty well acquainted with the history of New Mexico for past twenty-five years?

A. Yes, sir.

Q. And you are pretty well acquainted with public men?

A. Yes, sir.

Q. Was Santa Fé a pretty large town at that time?

A. I should judge it was nearly as large as it is now.

Q. How often did you get mail?

A. I don't just remember now whether it was once a week or twice a week; sometimes only two or three times a month.

Q. Such a thing as an indignation meeting against the governor would, of course, have excited your notice, when right in front of the governor's and where you had your office, and where the governor's was, and where these papers were?

A. I can't tell.

Q. Did you ever hear that there were any land grants among these three or four pounds that was missing?

A. I never heard that anything was found.

Q. No one ever come and told you?

A. No, sir.

Q. But you don't know of your own knowledge?

A. No, sir.

Q. That there might have been grants amongst them?

—. ——.

Q. Your experience in the Missouri legislature did not give you opportunity to examine or know anything about Mexican land grants, did it?

A. No, sir.

Q. How old were you in 1869, when this thing happened?

A. Twenty-five or twenty-six.

Q. You had some experience in the newspaper line; were you in the newspaper business at that time?

A. Only occasionally writing for the New Mexican.

Q. Did not the New Mexican have an account of that?

A. I don't remember now.

Q. You wrote for it pretty regularly, didn't you?

A. Yes, sir; I generally did.

Q. Who was the United States attorney in 1869?

A. I don't exactly remember.

Q. Who was secretary of the Territory?

A. I don't know.

103 Q. Who was United States marshal?

A. I don't know.

Q. How much money did you get from that merchant to whom you sold those papers?

A. I think it was probably a dollar and a half or two dollars.

Q. Now, as a newspaper man, how much were these papers worth by the pound?

(To which question the attorney for the United States objected as immaterial; which objection was by the court overruled.)

A. I sold a barrel full; I returned him the money and took the barrel back, all except two or three pounds.

Q. Do you remember who you sold them to?

A. It was a merchant on the plaza, named Davus.

Q. Do you remember where his store was situated?

A. I think it was near where the Second national bank is located now.

Q. How many banks were there in existence at that time in this city?

A. Not any.

Q. And you say you got back all but five pounds?

A. I don't think there was as much as five pounds.

Q. Can you tell me who was surveyor general in 1869?

A. T. W. Spencer.

Q. Do you remember who was postmaster here?

A. No, sir.

Q. Was "The New Mexican" issued then as a daily or weekly?

A. I think it was a daily.

Q. Published in Spanish or English?

A. Both.

Q. You took the New Mexican daily while you were here?

A. Yes, sir.

Q. Is it not a fact that when you were in town you read it every day?

A. When not occupied in other business, I did.

Q. When did you hear first, after this occurred, that there was an indignation meeting?

A. I don't remember of hearing of any indignation meeting except a general talk around town.

Q. It was why the papers were sold?

A. After this it was talked—all-around hearsay.

Q. I notice you went to that merchant and got them back.

A. Governor Pile and I consulted, and he said probably the best thing to do was to get the papers back, as there was some talk about the papers being of some value.

Q. You cannot state but what there might have been amongst those two, three, four, five pounds of papers some valuable ones?

A. There might have been.

Q. And that suspicion induced you and the governor to get the papers back——

—. ——.

Q. Did you only sell one pile of these archives; any others?

A. I believe that was all I sold.

104 Q. Do you remember who the receiver of public moneys was here then in the land office?

A. Mr. Little was receiver about that time.

Q. Who was the United States depositary?

A. Mr. Little was.

Q. Where was his office situated?

A. In the palace.

Q. Who was the judge of the court here then?

A. I think Judge Benedict; I don't just remember at that time; it may have been a little after. (Later) Palen was judge here at that time.

Redirect examination by Mr. REYNOLDS, U. S. attorney:

Q. You never heard of the Cubero land-grant papers being amongst those?

A. No, sir.

Q. You never heard of any such grant as the Cubero?

A. No, sir; not at that time.

Q. You never heard any complaint or talk about the Cubero grant being around or anything about it before or since?

A. No, sir.

Recross-examination by Mr. FROST, plaintiffs' att'y:

Q. What do you know about land grants, anyhow—only general hearsay?

A. I do not——

Q. Do you know anything of your own knowledge about a grant?

A. I have been living here and I can say I know what a land grant is since I have lived here.

Q. I do not ask you how long you have lived here nor what you have learned living here, but what do you know about land grants, papers, archives, records—anything?

A. Something.

Q. In the very nature of things, you couldn't have known anything about the Cubero land grant?

A. Not at that time.

Q. For all you know, possibly title papers might have been amongst those five pounds of papers, might it not?

A. Yes, sir; it might have been.

Here defendant rested its case.

105 (DEFENDANT'S EXHIBIT A.)

U. S. SURVEYOR GENERAL'S OFFICE,
SANTA FÉ, N. MEX., *July* 21, 1886.

In the matter of the private land claim known as the grant to Antonio Sandoval for the Estancia tract. File No. 10. Reported No. 70.

This claim was filed in this office by Gervacio Nolan July 12, 1855. Afterwards, the date not being given, an amended petition was filed by persons claiming to be the widow and heirs of Nolan. After an investigation Surveyor General Proudfit, on January 4, 1873, recommended the confirmation of the claim by Congress, according to the boundaries asserted. Under instructions of the General Land Office I have re-examined the case, and submit the following report:

In proof of the claim the petitioners presented several Spanish documents, by one of which it is shown that on December 5, 1845, Antonio Sandoval presented his petition to the governor of this Territory, setting forth that the Mexican government was indebted to him in large sums on account of services rendered and money loaned, and requesting that he be granted a tract of land bounded as follows: "Towards the north one league from the Berrendo spring, the said Berrendo spring being within the possession, and towards the south from the Salt lakes another league; on the east the little hills of the Pedernal, and on the west the water of the Mesteñas."

On the 7th of the same month the governor, in consideration of the services rendered and the sums due, granted to the petitioner the land solicited. On December 15 following possession was delivered to an agent of the petitioner by Jose Baca y Ortiz, a justice of the peace, the boundaries named being the same as above stated.

106 A certificate of the comptroller of the departmental treasury was filed, showing that large sums of money were due Sandoval from the Mexican government.

There is nothing to indicate that any of these papers ever constituted a portion of the archives of the Mexican nation. A comparison of the signature of the governor to the granting decree with other signatures of the same officer on documents in this office

establishes its genuineness, and that of the other signatures upon said papers was testified to by a witness who was present when the possession of the land was delivered. It was not shown that any record of this grant was ever made.

In passing upon the validity of grants made under the colonization law of Mexico, as was this one, the Supreme Court of the United States, in the case of Peralta *vs.* United States, 3 Wall., 434, said:

"The colonization regulations of 1828 constitute the 'laws and usages' by which the validity of a Mexican title is to be determined." Also, "The record was the grant, and without it the title was not divested. The governor was required to give a document to the party interested, which was evidence of title and enabled him to get possession, but this 'titulo' did not divest the title unless record was made in conformity with law."

In discussing the same subject the supreme court of California, in the case of Leese and Vallejo *v.* Clarke, 3 Cal., 17, held: "To these regulations this court can alone look, and by them every grant must be determined. If the officers of the Mexican government to whom was confided this trust exceeded their authority or neglected the solemnities and formalities of the law, this court is bound to take notice of it, and cannot shield those claiming under such titles from the necessary consequences of ignorance, carelessness, or ar-
107 bitrary assumptions of power. * * * But that these requisitions must be fully complied with this court has no doubt, without which *a* severance of the land from the public domain and a rigid adherence in all other respects the title did not pass to the grantees, but remained in the government of Mexico."

In the case of Peralta *v.* United States, cited above, it is also said: "Written documentary evidence, no matter how formal and complete or how well supported by the testimony of witnesses, will not suffice, if it is obtained from private hands, and there is nothing in the public records of the country to show that such evidence ever existed."

It seems quite clear, according to the authorities cited, that no legal title vested in the grantee in this case. Its validity is very questionable in another point of view. On referring to private land claim reported from this office as No. 35, it will be seen that on July 20, 1859, the surveyor general of this Territory recommended to Congress the confirmation of a claim made by Antonio Sandoval to a tract of land in Socorro county, in this Territory. This claim was confirmed by Congress June 21, 1860 (21 Stats., p. 71). It has been surveyed, and was patented March 21, 1877, for 60,117.39 acres. There can be little question that the grantee in this case is the Antonio Sandoval to whom a grant is alleged to have been made in the case now under consideration. The name of Antonio Sandoval appears to the petition to the governor in each, and the signatures were evidently written by the same person. Each petition recites that the petitioner is a resident of the town of Albuquerque,
108 both being dated at that place, one bearing date November 24, 1845, and the other December 5, 1845. The decree of the governor in each case says that the grant is made in consideration

of the personal services and financial assistance rendered the Mexican government by the grantee. The grant in No. 35 was made on November 28, 1845, and in No. 70 on December 7, 1845.

Under the restrictions of section 12 of the law of 1824 the maximum quantity grantable to one person was eleven square leagues. This provision could not be evaded by making separate grants. This question was decided by the United States Supreme Court in the case of The United States *vs.* Hartnell's Executor, 22 How., 286. The facts show the making of two grants, one in 1841 and the other in 1844. Both combined exceeded eleven square leagues. In deciding the case the court said:

"The narrow question is, Had the governor of California power, in 1844, to grant gratuitously, for the purpose of tillage, inhabitancy, and pasturage, more than eleven leagues of land to any one person? Section 12 of the law of 1824 provides that it shall not be permitted to unite in one hand as property more than one league of irrigable land, four leagues of farming land not irrigable, and six for stock-raising.

"Both titles of Hartnell were brought before the departmental assembly. That body held the law to be that the governor could not 'unite in the same hand' more than eleven, although it might be in different tracts, and so reported to him. * * *

"We have no doubt that the departmental assembly, the board of commissioners, and the district court construed the law of 1824 (section 12) correctly, and ordered the decree below to be affirmed in all its parts."

109 If the Antonio Sandoval named as grantee in each of the cases Nos. 35 and 70 was the same person, the governor possessed no power to make the second grant. This view is fully supported by the action of Congress and the officers of the Land Department in the settlement of claims reported from this office as Nos. 39 and 48, and known as the Nolan grants. In these cases two grants were made to the same person, one in 1843 and the other in 1845. By combining them, the quantity granted exceeded the limit fixed by the law of 1824. Congress, by an act of July 1, 1870 (16 Stats., 646), confirmed claim No. 48 to the extent of eleven square leagues, and provided that when such quantity was surveyed and patented it should be taken and held as full satisfaction of all further claims and demands of the confirmees against the United States. Two Commissioners of the General Land Office have since decided that under the above-cited act claim No. 39 was satisfied and had no legal standing, and the present Secretary of the Interior, in January last, affirmed their decision (12 Copp's Land Owner, 282), and the land covered by claim No. 39 was declared to be a part of the public domain.

Of the equity of the grantee, where the law and regulations were not complied with, it has been said:

"The title, at best, can only be considered as inchoate. It passed with the map of the property of Mexico to the United States, who now hold it subject to the trust imposed by the treaty of cession and the equities of the grantees. The execution of this trust, however,

is a political power, to which the judiciary is not competent until made so by legislation" (Leese and Vallejo *v.* Clarke, 3 Cal., 17).

110 If any equity arises in favor of the grantee in this case it must rest upon occupation and improvement of the land in good faith or the payment therefor in something of value. Section 11 of the regulations of 1828 is as follows:

"The governor shall designate to the new colonist a proportionate time within which he shall be bound to cultivate or occupy the land on the terms and with the number of persons or families which he may have capitulated for, it being understood that if he does not comply the grant of the land shall remain void. Nevertheless the governor may revalidate it in proportion to the part which the party may have fulfilled." (See Hall's Mexican Law, p. 151.)

No evidence was produced in this case that Sandoval ever occupied or cultivated the land in any manner, or that he was ever in possession or exercised any acts of ownership over it subsequent to the delivery of it to his agent.

It may be contended that, as the land was conveyed for a valuable consideration, the performance of these requirements was not necessary; but the regulations quoted make such performance necessary and indispensable. Besides, it was not shown that Sandoval released or entered satisfaction of any claim he held against the Government, and, for aught that appears, his demands were otherwise paid.

It may also be claimed that the governor possessed the power, outside of the colonization law and regulations referred to, to make concessions of the public domain of Mexico. The authorities cited show that this claim is untenable. This is conclusively shown by the Supreme Court of the United States in the cases of The United States *v.* Vallejo, 1 Black, 541; United States *v.* Vigil, 13

111 Wall., 449, and by the supreme court of California in the case of Leese and Vallejo *v.* Clarke, 3 Cal., 17.

Should it be held that either a legal or equitable title vested in the grantee the question as to quantity remains to be determined. That the Mexican government could not grant more than eleven square leagues to one person has already been shown. For further authorities on this point I refer to 1 White's Recop., p. 602, and United States *v.* Larkin *et al.*, 18 How., 567.

A survey of the claim under consideration was made under the supervision of this office in the years 1877, 1878, which embraces 415,036.56 acres, and the land is reserved from entry or sale. In November, 1883, a protest against the survey signed by several persons was filed in this office. It sets forth that the western boundary line, as fixed by the survey, is seven to eight miles too far west; that the southern line was fixed many miles south of the boundary call mentioned in the petition of Sandoval to the governor, or the act of possession, and that the eastern boundary was established at the summit of the hills or mountains, instead of at the base. It is further stated that the deputy executing the survey made no effort to ascertain the true location of the boundary calls, and the affidavits returned by him, taken ostensibly for that purpose, seem to

bear out the assertion. They are two in number, and each affiant was a resident of Las Vegas, some sixty or seventy miles from the land. The only statement made by one as to the boundary calls is his answer to the question as to the location of the Pedernal, which is: "It is there—that is, the hill of the Pedernal, and there
112 are the small hills of Pedernal." He made no statement as to being acquainted with the land or its boundaries.

The other witness stated that he knew nothing of the land, and his answer as to the Pedernal was in substance the same as the answer above copied, and this comprises his testimony on the subject, and the two constitute the entire evidence taken by the deputy surveyor, so far as is shown by the files of this office.

On February 8, 1886, the persons filing the protest above referred to requested that said protest be withdrawn, stating that they had become satisfied that the information upon which it was based was incorrect. What induced this action I am not prepared to say, but it is worth while to notice that one of the present claimants of the land was instrumental in having the withdrawal filed. It is only necessary to add that the survey made contains more than four times the quantity the governor was authorized to grant to one person, as shown by the law and decisions I have quoted.

Believing that no title, either legal or equitable, is shown in this case, the question of survey is not material, and I only refer to it as showing the spirit and character of the proceedings and as a very striking illustrative fact.

I recommend the rejection of the claim by Congress.

Triplicate copies of this report are transmitted, as required.

GEORGE W. JULIAN,
Surveyor General.

113 (DEFENDANT'S EXHIBIT B.)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *December* 17, 1886.

SIR: I have the honor to transmit herewith, for submission to Congress, the sup-lementary report, in duplicate, of the surveyor general for New Mexico on the private land claim designated as the Estancia tract, No. 70.

By a reference to the record in the case, consisting of copies of translations from alleged originals, it appears that under date of December 5, 1845, Antonio Sandoval petitioned the governor to grant to him, "in possession *integram*, the Salt Lakes tract, assigning as boundaries toward the north one league from the Berrendo spring, the said Berrendo spring being within the possession, and toward the south from the Salt lakes another league; on the east the little hills of the Pedernal, and on the west the water of the Mester*ias*," to be taken in compensation for services to the Mexican government. Under date of December 7, 1845, Manuel Armijo, the then governor, made the grant in the following terms:

The government being convinced of the valuable services Don

Antonio Sandoval has rendered and is now rendering the country, as well during the time to which he refers as also during the six years he served administering the prefecture of the second district, with a salary of $1,500, of which not even a half real has been paid to him, the sum due him amounting to $9,000, and the statements in his petition being true, I do, in exercise of the powers in me vested by the laws, and also in consideration of all the premises, and as a just title acquired, make to him the grant for the land he solicits, with all the dimensions and pasture lands he asks, that he may enjoy the same in the name of the supreme government of the Mexican nation, and under my concession free and exempt from all tax and tribute.

The next paper is a certificate, dated December 6, 1845, of Jose Serafin Ramirez, comptroller of the departmental treasury, wherein it is shown that Sandoval had served the Mexican nation for
114 many years, and that he had loaned numerous sums of money to the treasury of the nation, and there were large sums of money due him.

Under date of December 15, 1845, Jose Baca y Ortiz, justice of the peace of the Real del Oro, in obedience to the decree of the most excellent governor, proceeded to the land conceded and placed Juan Antonio Aragon, the representative of Antonio Sandoval, in possession of the tract described in the petition.

The next paper in the case is a translated copy of an original testamentary donation, by which it appears that under date of July 8, 1848, Sandoval conveyed all his title to said land to his nephew, Gervacio Nolan.

These are all the papers filed by the present claimants.

At the date of said alleged grant the regulations adopted November 21, 1828, under the colonization act of August 18, 1824, were the only laws in force relating to the disposal of the public domain — provide:

(1.) The governors of the Territories are authorized (in compliance with the law of the General Congress of the 18th of August, 1824, and under the conditions hereinafter specified), to grant vacant lands in their respective Territories to contractors (empresarios), families, or private persons, whether Mexicans or foreigners, who may ask for them for the purpose of cultivating or inhabiting them.

(2.) Every person soliciting lands, whether he be an empresario, head of a family, or private person, shall address to the governor of the respective Territory a petition setting forth his name, country, profession, the number, description, religion, and other circumstances of the families or persons with whom he wishes to colonize, describing, as distinctly as possible, by means of a map, the land asked for.

115 (3.) The governor shall proceed immediately to obtain the necessary information whether the petition embraces the conditions required by the said law of 13th August, both as regards the land and the candidate, in order that the petitioner may at once be

attended to, or, if it be preferred, the respective municipal authority, whether there be any objection to making the grant.

(4.) This being done, the governor will accede or not to said petition in exact conformity to the laws on the subject, and especially the before-mentioned one of the 18th August, 1824.

(5.) The grants made to families or private persons shall not be held to be definitely valid without the previous consent of the territorial deputation; to which end the respective documents (expedientes) shall be forwarded to it.

(6.) When the governor shall not obtain the approbation of the territorial deputation he shall report to the supreme government, forwarding the necessary documents for its decision.

(7.) The grants made to empresarios for them to colonize with many families shall not be held to be definitely valid until the approval of the supreme government be obtained; to which the necessary documents must be forwarded, along with the report of the territorial deputation.

(8.) The definitive grant asked for being made, a document signed by the governor shall be given to serve as a title to the party interested, wherein it must be stated that said grant is made in exact conformity with the provisions of the laws in virtue whereof possession shall be given.

116 (9.) The necessary record shall be kept, in a book prepared for the purpose, of all the petitions presented and grants made, with the maps of the lands granted, and a circumstantial report shall be forwarded quarterly to the supreme government, etc.

From the foregoing it will be seen that to make a grant under the Mexican government definitively valid it was necessary first to address a petition to the governor, who was to make enquiries relative to the fitness of the applicant and to make his decree, which decree or concession was then submitted to the departmental assembly, and if there approved the governor then issued the definitive grant, with direction to the proper officer to place the party in possession. After having been placed in possession he was then to have his muniments of title recorded in a book kept for this purpose.

The paper filed by the present claimant is the original decree or concession. There is no evidence that the same was ever approved by the departmental assembly nor that a final title ever issued. There is nothing to show that the same had been recorded nor is there anything to show that the present claimants have in any manner occupied, cultivated, and inhabited the land claimed.

In the petition of Sandoval to the governor he states that the land asked for will be taken as compensation for past services.

In the governor's concession for the land he states that Sandoval had served the government for years, and that the sum of $9,000 was still due, and then proceeds to concede the land asked for.

The Supreme Court of the United States in the case of The
117 United States *v.* Vigil (13 Wallace, p. 451) says:

It has been repeatedly decided by the court that the only laws in force in the Territories of New Mexico for the disposition of the public lands, with the exception of those relating to missions

and towns, are the act of the Mexican Congress of 1824 and the regulations of 1828. * * * This policy recognized the obligation resting on the Government to hold the public land as a public trust, to be administered for the benefit of those who would settle upon them or cultivate them. They could not be sold for money nor granted away in consideration of past public services nor on condition for making public improvements of use to the traveling community or of general benefit to the State. The power to cede them depended entirely on the uses to which they were to be put, and these, as we have seen, were cultivation or settlement. The legal right to dispose of them for other objects was withdrawn from the local authorities and rested alone with the supreme government.

By reference to the records of this office I find that under date of November 24, 1845, Antonio Sandoval, a resident of the town of Albuquerque, petitioned the governor for a tract of land known as the Bosque del Apache. Under date of November 28, 1845, the governor, in consideration of the meritorious services of the petitioner, granted the land applied for. This claim was confirmed as No. 35 by the 3d section of the act of Congress of June 21, 1860 (Stats. 12, p. 71), and was patented March 21, 1877. This patent covers a tract of 60,117.39 acres, 11,292.91 acres in excess of eleven square leagues, which was the maximum quantity the governors of Mexico were authorized to grant to one individual.

Antonio Sandoval, the alleged grantee in this case, — undoubtedly the same party to whom the grant of the Bosque del Apache was made, as they were both residents of Albuquerque, and the concession and grant are in both cases made for services rendered and money loaned the Mexican government.

In the case of The United States *v.* The Widow, Heirs, and Executors of William E. P. Hartnell, deceased, the Supreme Court say:

118 "The narrow question is: Had the governor of California power, in 1844, to grant gratuitously for the purposes of tillage, inhabitancy, and pasturage more than eleven leagues of land to any one person? Section 12 of the law of 1824 provides that it shall not be permitted to unite in one hand as property more than one league of irrigable land, four leagues of farming land not irrigable, and six for stock-raising.

Both titles of Hartnell were brought before the departmental assembly. That body held the law to be that the governor could not "unite in the same hand" more than eleven leagues, although it might be in different tracts, and so reported to him.

There was never any record of this preliminary concession or of the juridical possession. Relative to the necessity of the record under the Mexican government, the Supreme Court has held:

The colonization regulations of 1828 constitute the laws and usages by which the Mexican title is to be determined. * * * The record was the grant, and without it the title was not divested. The governor was required to give a document to the party interested, which was evidence of title and enabled him to get possession; but

this titulo did not divest the title unless record was made in conformity with law.

The non-production of this record evidence of the title under the circumstances is calculated to excite well-grounded suspicions as to its validity, and throws upon the claimant the burden of producing the fullest proof of which the party is capable of the genuineness of the grant. We do not say that the absence of the record evidence is of itself necessarily fatal to the proof of the title, but it should be produced or its absence accounted for to the satisfaction of the court (United States *v.* Teschmacher *et al.*, 22 Howard, p. 405).

In the case of Peralta *v.* The United States (3 Wallace, p. 440), in considering the proof necessary to establish a grant made by Mexico, held that—

Written documentary evidence, no matter how well supported by the testimony of witnesses, will not suffice if it is obtained from private hands and there is nothing in the public records of the country to show that such evidence existed. See also 1 Black, p. 227, and cases cited.

It may be proper to state that there *has* been confirmed and patented to Gervacio Nolan eleven square leagues of land. This was in satisfaction of two claims presented for confirmation, one as original grantee and the other to himself and associates.

119 The act of confirmation (July 1, 1870, Stats. 16, p. 646) provides that when said lands are so confirmed, surveyed, and patented they shall be held and taken to be in full satisfaction of all further claims or demands against the United States.

Parties claiming to be the heirs of Gervacio Nolan are the present claimants in this case. The confirmation of 1870 to Nolan being in full satisfaction of all further claims or demands against the United States, the present claim by his heirs should fail.

A preliminary survey of this grant has been made at the instance of the grant claimants, purporting to conform to the boundaries mentioned in the petition, and covers an area of 415,036.56 acres.

In this case none of the proceedings necessary to make a preliminary concession definitively valid were ever had. The governor made no report to the territorial deputation. There was never any approval of the preliminary concession by the deputation. No definitive title ever issued. There was no record for the reason that the same had never reached the dignity of a grant. The governor could not make a grant of land in consideration of past public services.

Antonio Sandoval having procured a confirmation by and patent from the United States for 60,117.39 acres, equal to 13.54 leagues, or 2.54 leagues more than the Mexican government was authorized to grant under the laws, the second grant was illegal and of no effect.

The claim of Nolan depending upon a testamentary donation by Sandoval, he succeeded to only such rights as Sandoval may have had; and as Sandoval had no legal title, there was nothing which Nolan could take.

No evidence is produced showing that Sandoval or Nolan had

ever inhabited, cultivated, or occupied this claim; hence no
120 equities are shown.

For the reasons above recited, I concur in the recommendation of Surveyor General Julian that the claim be rejected by Congress, thereby restoring to the public domain over 415,000 acres of land which are now reserved to satisfy this illegal and inequitable claim.

I am, sir, very respectfully, your obedient servant,

WM. A. J. SPARKS,
Commissioner.

Hon. L. Q. C. Lamar, Secretary of the Interior.

121 (DEFENDANT'S EXHIBIT C.)

NOTA.—Ba en el presente papel comun por no haber en todo este Territorio, del sello correspondiente.

Secretario de la Diputacion Territorial del Nuevo Mejico.

Certifico yo el infrascripto Secretario de la Exma. Diputacion Territorial Nuevo Mejico que en Libro de Actas de los acuerdos de S. E. A. las 34 fojas se halla una en que consta haberse presentado (sesion del dia 19 de Nove. de 1824) una solicitud de Da Ursula Chavez a nombre y por la auciencia de su legitimo esposo D. Antonio Sandoval, cuyo tenor a la Letra es como sigue. Exmo. Sor: Da Ursula Chavez vecina y residente en la Plaza de los Padillas en la jurisdiccion de la Ysleta; a V. E. hace presente: Que mi Esposo D. Antonio Sandoval en el corriente año por medio de una respresentacion solicito ante el Señor Gefe Policico un terreno en la Agua Negra con el objecto de que permanesca en dicho sitio la Hacienda que hace años tiene alli; mas habiendo llegado el tiempo de que indispensablemente debia verificar su marcha mi sitado esposo para la ciudad de Durango, y viendo que nada se hebia resuelto sobre su solicitud me previno ocurriese a V. E. como lo verifico. A nombre de mi sitado esposo como dejo referido: suplico a V. E. se digne mandar siempre que para ello, no haya dificultad se done a mi esposo D. Antonio Sandoval en el paraje nombrado de la Agua Negra, una propiedad que conste de una legua por cada rumbo; pues las perdidas que mi sitado esposo esta sufriendo solo dimanan de haber caresido hasta ahora de una propiedad en que suficientemente, puedan encontrarse reunidos los principales intereses de que consta su corto giro; a mas de que jamas molestari a V. E. mi sitado esposo con semejante peticion si no estubiere convencido de queel paraje que solicita no reconoce dueño legitimo ni mucho menos resulta por esta donacion el menor por esta donacion el
pues este terreno ignoro reconosco alguna Alcaldia de la Prova
menor per juicio a la Prova. y por lo mismo suplico a V. E. que
esta posesion me sea dada por el individuo que V. E. tenga
122 a bien. San Andres de los Padillas, Noviembre 5 de 1824.
Por mandado de Da Ursula Chavez, Francisco Sarracino.

Diputacion Territorial del Nueva Mejico, 19 de Noviembre de

1824. Pase esta instancia al Señor Gefe, Superior Politico para que a continuacion de ella informe si conviene o no accederse a la solicitud a que se refiere, o si hay impedimento justo y legal para negarsele el terreno que solicita, Bartolome Baca, Presidente: Antonio Ortiz, Pedro Jose Perea, Pedro Bautista Pino, Matias Ortiz, Juan Bautista Vigil, Secretario. Exmo. Señor: El ciudadano Bartolome Baca Gefe Superior Politico de Nuevo Mejico y Presidente de su Diputacion Territorial, A. V. E. hace presente: Que a virtud de la solicitud presentada por Da Ursula Chavez a nombre y representacion de su Esposo legitimo la sesion de este dia paso en el mismo a manifestar en favor del asunto lo siguiente: Nada. Señor Exmo., puede interesar mas, a la felicidad de los habitantes de este suelo, como la propagacion de la industria progresiba de la cria de ganados de hasta lanar y caballada, siendo sin comparacion mas anexa cuando esta por los particulares y a costa de esponer sus intereses con ellos mismos, ban cubriendo las fronteras que sirven de obstaculo a la propria industria; mas allanado un paso que hasta la fecha aun al mismo Gobierno la ha sido insuperable, resulta un veneficio incalculable a este Territorio con la incomparable providencia de dar propidad de terrenos para criaderos de ganados mayores y menores en las fronteras de mas consideracion para el resguardo de las poblaciones que conserban un terror panico sus moradores por las hostilidades que con tanta repeticion de sucesos lastimosos sufren sin poder contar por parte del gobierno con la remora de su defensa. Los habitantes de este Territorio aun no conocen todavia las ventajas que les resultan de que los proprietarios de rango, en el estado de intereses mo-
123 vientes, sean los que con ellos mismos manifiesten a las tribus de Yndios barbaros que nos rodean que el poderoso auge de nuestras armas se estiende a ocupar los terrenos que no ha mucho tiempo consideraban como un patrimonio suyo, haciendolo respectar solamente el temor, a sus deviles y despreciables armas: asegurando a V. E. sin el menor riesgo de equivocarme, que las generaciones venideras vendeciran esta tan laudable providencia dada por V. E. en el tiempo de la desolacion y de la miseria en que la tribu Nabajo y otros barbaros creian haber dejado a este precioso suelo. No molestaria a V. E. haciendo estas reflecciones si no las considerara tan oportunas como necesarias para quitar las trabas que por ignorancia o por malicia se quieren oponer a una providencia tan veneficiosa como necesaria para el fomento de los intereses de estos habitantes, sopretesto de alegar perjuicios imaginarios contra su mismo veneficio e intereses tanto mas recomendables, cuanto que hace muy poco tiempo, que los intereses de este Territorio estaban reconsentrados en uno que otro individuo de no muy aventajadas proporciones; no sucede a la presente E. S. tal desventaja pues por mas que se decante la pobresa de nuestros conciudadanos, tiene este suelo numero considerable de hombres de proporciones de industria y de caudal, que, con la proteccion de veneficas providencias seran el ornamento, y el foco de la riqueza de este continente. Tengo manifestado a V. E. en el informe que estendi (provocado por V. E.) en la solicitud del basto terreno que en el Rio de las Gallinas pidio,

y se le concedio, al ciudadano Juan Estevan Pino, las miras del Supremo Gobierno en la repoblacion de este suelo, y por lo mismo omito su repeticion; contrayendome unicamente a recomendar a V. E. el buen despacho de la solicitud que Da. Ursula Chavez hace a nombre de su esposo D. Antonio Sandoval quien solamte. pide en el punto conosido por el Agua Negra, una legua cua drada,
124 para tener en ella los bienes de campo que posee: Sube de punto el merito de mi recomendacion, cuanto mas distante se halla dicho terreno de las poblaciones, y del que tengo manifestado a V. E. combiene reservarse en el centro de los Rios Pecos y del Xorte; asi por la cortedad de sus aguas como por lo immediato a todos los pueblos de este Territorio que comunalmte. lo necesitan muy amenudo, y para el tiempo de la intemperie del frio e imbaciones de los Indios barbaros y salvajes que le acometen temporalmente. Por todas estas razones, e inumerables que omito por no molestar a V. E. es muy conveniente que con la mayor diferencia vea V. E. la solicitud de D. Antonio Sandoval, y sin perdida de momento se le conceda el terreno que solisita, el que hallandose tan distante de todas las jurisdicciones de este suelo no se puede ordenar a ninguna de sus autoridades ponga a dicho Sandoval en pocesion del terreno que ha solicitado, y por lo mismo puede V. E. comisionar al efecto a Don Francisco Sarracino para que de orden de V. E. asi lo verifique; o como a V. E. mejor parecerle pueda. Santa Fé, del Nuevo Mejico, 19 de Noviembre de 1824. Bartolome Baca. Sesion del dia 19 de Noviembre de 1824, libro 2°, fojas 34, parafo 4°. Se presento una solicitud pidiendo en ella Da. Ursula Chavez por auciencia de su esposo Don Antonio Sandoval se le conseda en el punto conosido por el Agua Negra, una legua de terreno en cuadro, para que teniendo en ella la propiedad correspondiente, pueda introducir sus intereses o bienes de campo como lo solicita. Se resolvio despues de haberse oido con agrado el informe que a continuacion estendio el Senor Gefe Politico, se conceda a D. Antonio Sandoval la legua de terreno que solicita en el paraje de la Agua Negra y sin perjuicio de tercero; y que por la Secretaria de esta Diputacion se le de a el interesado el testimonio correspondiente que le servira de titulo, y con el mismo, y de orden
125 de esta junta pasara Don Francisco Sarracino a dicho punto del Agua Negra y arreglado a lo que ha acordado S. E. pondra en pocesion al referido D. Antonio Sendoval. Bartolome Baca, presidente; Antonio Ortiz; Pedro Jose Perea; Matias Ortiz; Juan Bautista Vigil, secretario.

Concuerda fiel y legalmente con los originales de que ha sido sacado el presente testimonio que de orden de S. E. doy a Don Antonio Sandoval vecino de la Plaza de San Andres de los Padillas Jurisdicion del Ayuntamiento de San Agustin de la Ysleta. Es copia. Santa Fé, del Nuevo Mejico, 21 de Noviembre de 1824.

JUAN BAUTISTA VIGIL, *Srio.*

Derechos del testimonio de estos documentos 20 pesos.

JURISDICCION DE LA YSLETA EN PAJARITO.
Decembre 1°, *de* 1824.

Cumpliendo con el antesedente mandato por S. E. la diputacion territorial de N°. Mexico, Franco. Sarracino por este auto ordeno a Dn. Antonio Sandoval se presente para el dia 5 del corriente mes en el ojo de la Agua Negra, cerca del Rio de Pecos para ponerlo en la plena pocesion que se le ha concedido. Hagasele saber asi al dicho Dn. Anto. Sandoval para su cumplimiento.

F°. SARRACINO,
Comisionado.

CAMPO SOBRE EL OJO DE LA AGUA CERCA DEL RIO DE PECOS, *Decembre* 5, *de* 1834.

Franco. Sarracino, Juez Comisionado por S. E. la Diputacion de este Territorio a virtud del decreto arriba escrito, estando
126 sobre la cabeza del ojo del Agua Negra y no habiendo incontrado impedimento alguno en perjuicio de tercero que pudiera conbarazar la dicha pocesion, pongo en plena y pacifica pocesion de dicho sitio a Dn. Anto. Sandoval como suyo propio, señalandole y dandole toda Señoria de una legua por cado rumbo de 5,000 varas castellanas tomando una linea recta desde el dicho ojo al oriente de 5,000 varas, otra igual al Poniente de la misma manera, otra linea recta al Norte de 5,000 varas y otra igual al Sur de 5,000 varas que formaran el cuadro correspondiente a la pocesion que seran los linderos fijos del dicho sitio de la Agua Negra que en este dia entrego a D. Anto. Sandoval par a que use de el como suyo propio sirviendole estos documentos de justo titulo y para toda constancia lo firme, siendo testigos, Mateo Lopez y Roque Chavez, que por no saber escribir no firmaron.

F°. SARRACINO.
Comisionado.

127 (DEFENDANT'S EXHIBIT C.)

Translation.

(NOTE.—The following is written on common paper, there being none of the proper seal in all this Territory:)

Office of the secretary of the territorial deputation of New Mexico.

I, the undersigned, secretary of the most excellent territorial deputation of New Mexico, do hereby certify that at page 34 of the book of proceedings of Its Excellency there appears a petition presented by Dona Ursula Chaves (at the session of the 19th day of November, 1824), in the name and during the absence of her legitimate husband, Don Antonio Sandoval, the literal tenor of which is as follows:

MOST EXCELLENT SIR: Dona Ursula Chaves, native and resident of the town of Los Padillas, in the jurisdiction of Ysleta, represent, to Your Excellency. That my husband D. Antonio Sandoval, during

the present years, solicited from the honorable political chief, by petition a tract of land at the "Agua Negra," for the purpose of keeping permanently at that place the stock he has had there for many years; but the time having arrived for my husband to make and unavoidable journey to the city of Durango, and seeing that nothing has been done with his petition, it occurred to me to apply to Your Excellency, as I now do, in the name of my said husband, as above mentioned, praying Your Excellency to be pleased to order (providing there is no obstacle in so doing) that a tract containing one league in each direction be donated to my husband at the place called "Agua Negra," the losses my husband is now suffering are occasioned only by not having a sufficient piece of property in which to keep together the principal stock which composes his business. Further, my husband would not trouble Your Excellency with such a petition were he not satisfied that the land he solicits is not claimed by any legal owner, and no injury whatever will result to this province, as I am not aware that this land is claimed to be
128 under any justice's jurisdiction in the province, and therefore I pray Your Excellency that the possession thereof be given to me by the individual Your Excellency may be pleased to designate.

SAN ANDRES DE LOS PADILLAS.

November 5th, 1824.

By direction of—
DONA URSULA CHAVES.
FRANCISCO SARRACINO.

TERRITORIAL DEPUTATION OF NEW MEXICO,
November 19th, 1824.

Let this petition be transmitted to the superior political chief, in order he may report, immediately following, if it is convenient or not to grant the petition referred to, or if there is any just or legal impediment to deny him the land that he petitions for.

BARTOLOME BACA, *President.*
ANTONIO ORTIZ.
PEDRO JOSE PEREA.
PEDRO BAUTISTA PINO.
MATIAS ORTIZ.
JUAN BAUTISTA VIGIL, *Secretary.*

MOST EXCELLENT SIR: Citizen Bartolome Baca, superior political chief of New Mexico and president of its territorial deputation, represents to Your Excellency that in view of the petition presented by Dona Ursula Chavez, in the name and representing her legitimate husband, Don Antonio Sandoval, and in compliance with the directions of Your Excellency made in session of today, I proceed to report in favor of the matter as follows: Nothing, most excellent sir, can be more interesting to the inhabitants of this land than the propagation of the progres-ive industry of the raising of horned and woolen cattle and horses, being without comparison more important, when it is

considered that individuals at the risk of the loss of their property are covering the frontiers which are an obstacle to that branch, but the overcoming of one obstacle, which up to the present time the government has not been able to overcome an incalculable benefit results to the Territory with the incomparable measure of granting lands for the raising of stock and sheep on the most favorable frontiers, for
129 the protection of the settlements, the inhabitants of which are in constant terror on account of the hostilities which are so often repeated, attended with so many painful circumstances, without being able to receive any protection from the government. The inhabitants of this Territory are not yet aware of the benefits resulting from the wealthy proprietors with their stock showing the tribes of barbarous Indians who surround us that the powerful renown of our arms is extended to the occupation of the lands which not long since were claimed by them as their inheritance, the fear of their weak and despicable arms alone making them respected. Assuring Your Excellency, without the least fear of being mistaken that future generations will bless this laudable step taken by Your Excellency at the time when the Navajo and other wild tribes considered that they had laid waste this precious land—I would not trouble Your Excellency with these remarks, did I not consider them appropriate and necessary to remove the prejudices which through ignorance or malice are being brought to bear against such beneficent and necessary measures for the welfare of the interests of these inhabitants under the pretext *or* arguing imaginary obstacles against their own interest and benefit, much more to be recommended, when it is considered that not long since the wealth of this Territory was confined to a few individuals, without extensive means; such is not the case at present, Your Excellency, as although the poverty of our fellow-citizens is always set forth, this territory contains a considerable number of persons with capital, industry, and means, who, receiving the protection of beneficent measures, would be the ornament and the source of the wealth of this continent. I have already stated to Your Excellency in the report made (by your direction) in reference to the petition of Don Juan Esteban Pino, who asked for and re-
130 ceived the large tract of land on the Gallinas river, and with the views of the supreme government, in reference to the resettlement of this country, which I will not here repeat. Restricting myself only to recommend to Your Excellency the favorable consideration of the petition made by Dona Ursula Chaves in the name of her husband Don Antonio Sandoval, who only asks for one league square at the place known by the name of Agua Negra, for the purpose of keeping his herds there. My recommendation is apparent when it is considered that this land is very far from the settlements and which as already stated to Your Excellency, it is proper to reserve in the centre of the Pecos and Del Norte rivers, on account of the scarcity of water, as well as its immediate vicinity to all the settlements in this Territory, who commonly require it very often on account of the inclemency of the weather and the occasional attacks of the savage and wild Indians.

For all these reasons and many others with which I will not

trouble Your Excellency, it is very proper that you consider the petition of Don Antonio Sandoval with the greatest deference and that the land asked for by him be granted without any loss of time, which being situated so far from any jurisdiction in this Territory, none of its authorities can be directed to place said Sandoval in possession of the land he has petitioned for, for which reason Your Excellency can commission Don Francisco Sarracino to place him in possession under your direction, or as Your Excellency may deem most proper.

Santa Fé, New Mexico, November 19th, 1824.

BARTOLOME BACA.

Session of the 19th of December, 1824, Book 2d, page 34, paragraph 4.

A petition was presented by Dona Ursula Chaves, in the absence of her husband, Don Antonio Sandoval, asking for a grant of one league square of land at the place called Agua Negra, in
131 order that having the proper title thereto he may take his property and stock there, as he states. It was resolved after having heard with pleasure the report of the political chief, attached thereto, that the grant of one league of land petitioned for by Don Antonio Sandoval, at Agua Negra, be granted to him, without injury to any third party, and that through the office of the secretary of this deputation the proper copy be given to the party interested which shall answer as a title thereto, and with the same and by direction of this body Don Francisco Sarracino will proceed to the point of Agua Negra, and according to the directions of Its Excellency will place the aforesaid Don Antonio Sandoval in possession.

BARTOLOME BACA, *President.*
ANTONIO ORTIZ.
PEDRO JOSE PEREA.
MATIAS ORTIZ.
JUAN BAUTISTA VIGIL, *Secretary.*

The above agrees faithfully and legally with the originals from whence the present copy has been taken, which is given to Don Antonio Sandoval, resident of the town of San Andres de los Padillas, jurisdiction of the corporation of San Agustin de la Ysleta, by order of Its Excellency. Copy.

Santa Fé, New Mexico, November 21st, 1824.

(Signed) JUAN BAUTISTA VIGIL, *Secretary.*

Fees for copying this document, 20 dollars.

JURISDICTION OF YSLETA, PAJARITO, *December* 1*st*, 1824.

In compliance with the foregoing mandate of its excellency, the territorial deputation of New Mexico, I, Francisco Sarracino, do hereby order Don Antonio Sandoval to present himself on the 5th

day of the present month at the spring of the Agua Negra,
132 near the Pecos river, to place him in the full possession granted to him. Let the above be made known to the said Don Antonio Sandoval for his compliance therewith.

(Signed) FCO SARRACINO,
Commissioner.

CAMP ON THE AGUA SPRINGS NEAR THE PECOS RIVER, *December* 5, 1824.

Francisco Sarracino, justice commissioned by its excellency, the deputation of this Territory, by virtue of the above-written decree, being at the head of the Agua Negra spring and having found no impediment to the injury of any third party for granting said possession, I placed Don Antonio Sandoval in full and quiet possession of said land, pointing out and giving him full control over one league of 5,000 Castilian varas in each direction, drawing a direct line from the spring 5,000 varas toward the east, one of the same length toward the west, another direct line of 5,000 varas toward the north, and another of 5,000 varas toward the south, which form the proper square to the possession which are to be the fixed boundaries of the tract of the Agua Negra, which I this day deliver to Don Antonio Sandoval, to — used by him as his own property, this document being a just title to him, and in testimony thereof I signed, Mateo Lopes and Roque Chaves, being witnesses, whom not knowing how to write, did not sign.

(Signed) FRCO SARRACINO,
Commissioner.

133 *Claim No.* 41.

ANTONIO SANDOVAL.

This case was filed on the 21st of October, 1856, and set for trial on the 3d day of December, 1856.

On the 5th day of November, 1824, Ursula Chaves, the wife of Antonio Sandoval, in his name petitioned the political chief for a grant to a tract of land containing one league square at the place called Agua Negra.

The territorial deputation referred the petition to the political chief for his report, which was done on the 19th November of the same year, recommending the grant to be made, which was accordingly done by the territorial deputation on the same day.

The document acted upon by this office is a certified copy of the petition and grant made by the secretary of the territorial deputation. The possession given by Francisco Sarracino by order of the territorial deputation is original.

The signatures are proven to be genuine; and, as the grant is made in conformity to law and was in the occupancy of the grantee

at the time, it is therefore confirmed and transmitted for the action of Congress in the premises.

WM. PELHAM,
Surveyor General.

Surveyor general's office, Santa Fé, New Mexico, September 17, 1857.

134 (DEFENDANT'S EXHIBIT D.)

UNITED STATES OF AMERICA, } ss:
Territory of New Mexico, }

To William Pelham, surveyor general of New Mexico:

Antonio Sandoval, a citizen of the United States, resident in the county of Bernalillo, Territory of New Mexico, respectfully represents to you that he is the claimant and legal owner in fee of a certain tract of land lying and being situate in the county of Socorro, Territory of New Mexico, and known as the Bosque de los Apaches, and bounded on the north by the rancho known as the Rancho de las Bacas, on the south by the grant of Valverde, and on the east and west extending two leagues on each side of the River Del Norte, all of which points and boundaries are well-known landmarks or easily to be ascertained in the said county of Socorro, and the said Antonio Sandoval, the present claimant, claims a perfect title to said lands by virtue of a perfect and unconditional grant made to him on the 28th day of November, A. D. 1845, by Manuel Armijo, the then acting and actual governor of New Mexico, which said grant was made as expressed upon the grant for meritorious services rendered the Republic of Mexico and in conformity to the laws, usages, and customs of the Republic of Mexico in force at the time said grant was made. For which power and authority see the decrees of Mexico of June 4th and September 18, 1823, pages 123 and 180 of the 2nd vol. of Galvan's Decrees. See also the Colonization Laws of the Republic of Mexico. See also decisions of the Supreme Court of the United States in Fremont's case, 19th Howard's Reports, page 542.

135 The said Antonio Sandoval, the present claimant, further states that he cannot show the quantity of land claimed by him except as the same are set forth in the grant, nor can he furnish a plat of survey, as no survey has ever been executed. Claimant further states that he knows of no adverse claims to said lands, and that by virtue of said grant he was legally put in possession of said lands and has retained the same down to the present time. Claimant files this his claim before you under the 8th section of the act of Congress approved 22nd of July, 1854, entitled An act to establish the offices of surveyor general of New Mexico, Kansas, and Nebraska to grant donations to actual settlers thereon, and for other purposes, and respectfully asks confirmation by you of this his said claim.

M. ASHURST,
Att'y for Claimant.

136 (DEFENDANT'S EXHIBIT E.)

Sello Tercero. [SEAL.] Un Peso.

Años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

Exmo. Sor. Gobor.:

El C. Anto. Sandoval, vecino de la villa de Albuquerque ante la recta justificacion de V. E. como mas en derecho haya lugar y al mio convenir pueda salvo las protestas utiles y necesarias comparesco y digo: Sor. que a virtud de haberme incontrado en los margenes del Rio del Norte en el punto que llaman el Bosque del Apache, un terreno baldio, yerto, y despoblado y sin perjuicio de tercero, y siendo como lo es en mi concepto el referido terreno muy ameno, abundante de aguas, pastos y demas, y para el aumento de la agricultura paso a impetrar la venebolencia de V. E. para que en nombre de ntros. soberanos poderes de la nacion Mejicana, se sirva el hacerme la gracia de concederme por posesion dicho terreno para lavorias y poner crias de ganados menores y mallores, sirviendose igualmente concederme los limites siguientes; que son desde el Rancho de las Bacas que le llaman para abajo una y otra banda del Rio hasta Balverde, esto es por las margenes del Rio, y por ejidos del lado del oeste y Sudeste dos leguas por cada rumbo si lo tubiere a bien V. E. segun las leyes. Por todo lo cual: A. V. E. rendidamente pido y suplico sea bien servido acceder a esta mi solicitud en lo que recivire merced y gracia que impetro, Juro no proceder demalicia protesto la buena fé, constas y lo necesario, &c.

ANTONIO SANDOVAL.

Albuquerque, Noviembre 24, de 1845.

SANTA FÉ, *Noviembre* 28, *de* 1845.

137 A consequencia de los servicios analogos y meritorios que Don Antonio Sandoval ha hecho a la patria, tanto con su persona como con sus bienes, en prestamos forzosos y demas sutencilios he tenido a bien consederle el terreno que solicita en nombre del Supremo Gobierno de la nacion Mejicana, y haciendo merito este gobierno de lo benefico que dicho Sandoval ha sido a la patria, y segun las facultades se me confieren por las leyes, le hago esta concepcion, *integrum*, con los limites y ejidos que pide libre de todo y franco de pencion, por lo cual pase el postulante al Jues de Paz dl Socorro para que ponga en posesion al suplicante y haga la escritura correspondiente.

MANUEL ARMIJO.

En este puesto y demarcacion de Sn. Miguel del Socorro perteneciente al 3er. Disto. del Departamento del Nuevo Mejico a los siete del mes de Marzo del presente año de mil ochocientos cuarenta y seis: Yo Don Vicente Pino Juez de Paz de dicha demarcacion autuando con testigos instrumentales, y de asistencia, con quienes autuo

por receptoria a falta de Escribano publico y nacional que no lo hay segun derecho en justo obedecimiento al decreto de E. S. Gobernador fecha 28 de Noviembre ultimoppase al terreno que se solicita en la anterior instancia que ase Don. Anto. Sandoval vecino de la Villa de Albuquerque y habiendolo inspecionado con bastante esaminucion y delicadeza lo incuentro baldio, yerto y despoblado y sin perjuicio de tercero, como lo relaciona la referida instancia a lo que haviendo dado estos pasos, le hice al presentante saber, en presencia de los testigos la peticion que hacia, y que respecto a lo aresgado y frontericio del terreno habia de mantener la gente que lo havitara bien proveido de armas de fuego, o flechas, para
defensa de sus personas e intereses, como igualmente que se
138 guarden todas las reglas y estitutos que los demas colonos
guardan, a lo cual estando entendido de todo lo que se le advierte lo tome por la mano, lo pasie por dichas tierras, tiro piedras, arranco sacates, y dio voces de alegria diciendo viva el Soberano Congreso de la nacion Mejicana, tomando posesion quieta y pacificamente y por lo mismo yo el referido Juez de Paz dije, en claras y inteligibles voces, que en nombre del Soberano Congreso de la nacion y sin perjuicio de sin nacional haver, ni el de tercero le hacia la concepcion del mencionado terreno, libre de todo y franco de pencion, señalandole por linderos que son por el Norte una mojonera de piedra y lodo que se puso cuando se dono el Socorro quedando contiguas una y otra posesion siendo la linea debisoria dicha mojonera, y por el sur siguiendo el curso del rio para abajo hasta toparse con los limites de Balverde, quedando tambien contigua; por el oriente las dos leguas que se citan en la instancia referida, y por el Poniente otras dos leguas segun queda citado, y por lo tanto, cumpliendo con lo prevenido por el E. S. Govor. y que incuentro el terreno sin perjuicio de tercero, como queda referido, pongo al citado Sandoval en legitima posesion para que con libre, franca y general administracion pueda usar de ella, como propiedad legitima, y para su constancia y que el presente documento de dona tenga la fuerza y validacion que en derecho se requiere, e interpuse e interpongo la autoridad que por derecho me es conferida, firmandolo con los testigos referidos en dicho dia, mes y año de que doy fee.

VICENTE PINO.

Asistencia:
JOSE ANTO. BACA Y PINO.
Asistencia:
PEDRO BEJIL.
Ynsl.:
JOSE ANASTACIO TORRES.
Ynsl.:
JOSE DIONICIO SILVA.
Ynsl.:
JUAN BERTA.

Derechos del jusgado 26 lo juro.

139 Este titulo es registrado en el libro letra "B" folios 18 y 19 en mi oficina. Lo que certifico, firmo y sello para constancia, Santa Fé, Diciembre 30, de 1848.

DONACIANO VIGIL,
Registrador de Titulos de Tierras del Territorio de Nuevo Mejico.

140 (DEFENDANT'S EXHIBIT E.)

Translation.

Seal third. [SEAL.] One dollar.

Years one thousand eight hundred and forty-four and eight hundred and forty-five.

Citizen Antonio Sandoval, resident of the town of Albuquerque, appealing to the upright justice of Your Excellency, in the most approved manner prescribed by law and convenient to me, saving such protests as may be useful and necessary app-ar- and state-:

That by virtue of having found on the banks of the Del Norte river at the point called Bosque del Apache, a tract of uncultivated, waste and unoccupied land and without injury to any third party, and as I believe said land to be extremely fertile, with an abundance of water and other requisites necessary for the advancement of agriculture, I proceed to impetrate the benevolence of Your Excellency that in the name of our sovereign powers of the Mexican nation, that you be pleased to grant me possession of said land for cultivation and the raising of cattle and sheep, being pleased to grant me also the following boundaries which are, from what is called "El Rancho de Las Vacas" (the cow herd) down the river, on both sides to Valverde, that is to say, following the course of the river, and for pasture on the west and southeast two leagues in each direction, if Your Excellency under the laws sees proper to do so. In view of all which

I humbly pray and request Your Excellency to be well pleased to comply with my request by which I will receive that grace and favor which I sue for. I swear that I am not acting through malice. I protest good faith, costs and whatever may be necessary, etc.

Albuquerque, November 24, 1845.

(Signed) ANTONIO SANDOVAL.

141 SANTA FÉ, *November 28th*, 1845.

In consequence of the analogous and meritorious services rendered to the country by Don Antonio Sandoval, not only personally but also with his property, in forced loans and in other ways, I have seen proper to grant him the lands he solicits in the name of the supreme government of the Mexican nation, and as this government takes into consideration the benefit the said Sandoval has been to the country, and by virtue of the power conferred upon me by law,

I invest him with this grant *integrum* (unconditionally), with the boundaries and commons for pasture he asks for, free from all, and exempt from tax, therefore the petitioner will present himself to the justice of the peace of Socorro, who will place the petitioner in possession and execute the proper deeds.

(Signed) MANL. ARMIJO.

At this place and demarcation of San Miguel del Socorro, belonging to the third district of the department of New Mexico, on the seventh day of the month of March of the present year, one thousand eight hundred and forty-six, I Don Vicente Pino, justice of the peace of said demarcation, acting with instrumental and attending witnesses, with whom I act in the well-known absence of public or national notaries, there being none according to law, in strict compliance with the decree of his excellency, the governor, bearing date the 28th November last, I proceeded to the land referred to in the foregoing petition made by Don Antonio Sandoval, resident of the town of Albuquerque, and having inspected it with a great amount of care and delicacy, I find it vacant, waste and unoccupied and without injury to third parties, as stated in the foregoing petition. Having taken these steps I proceeded to make
142 known to the petitioner, in the presence of witnesses, the request he made and in regard to the land being in a dangerous locality and on the frontier, he should well provide the people he would keep there with a sufficiency of firearms or bows and arrows in order to defend their persons and property and also that he should comply with all the rules and regulations provided for other colonists, having acknowledged that he was duly informed of the above conditions, I took him by the hand, and walked with him over said lands. He threw stones, pulled up grass and cried aloud with joy saying "Long live the sovereign Congress of the Mexican nation," taking possession quietly and peaceably and therefore, I, the aforesaid justice of the peace stated in a clear and audible voice that in the name of the sovereign Congress of the nation and without injury to its national revenue, nor to third parties, the aforesaid grant was made to him free from everything and exempt from taxation, specifying as boundaries, on the north, a monument of stone and mud, which was erected when Socorro was granted, the two possessions being adjoining, said monument being the dividing line, and on the south, following down the course of the river to where it is intersected by the boundaries of Valverde, being also adjoining; on the east, the two leagues mentioned in the foregoing petition, and on the west, two leagues more as therein mentioned, and therefore, in compliance with the instructions of his excellency, the governor, and finding the land will not injure any third party, as aforementioned, I placed the said Sandoval in legitimate possession, fully empowered to use it with free, unincumbered and general administration, as his legitimate property, and in order that this granting deed may have the force and validity required by law I did
143 and do interpose the authority conferred upon me by law,

signing with my aforesaid witnesses on the said day, month and year, to which I certify.

(Signed) VICENTE PINO.

Attending:
(Signed) JOSE ANTONIO BACA Y PINO.

Attending:
(Signed) PEDRO VIGIL.

Instrumental:
(Signed) JOSE ANASTACIO TORRES.

Instrumental:
(Signed) JOSE DIONICIO SILVA.

Instrumental:
(Signed) JUAN BEYTA.

Justice's fees 26 dollars.
I swear. [RUBRIC.]

144 ANTONIO SANDOVAL
vs.
THE UNITED STATES.

This case was set for trial on the 13th day of July, 1859.

On the 24th November, 1845, Antonio Sandoval petitioned Manuel Armijo, civil and military governor of New Mexico, for a tract of land situated in what is now the county of Socorro, in the Territory of New Mexico. On the 28th November of the same year the governor, in consideration of the valuable services rendered to the Government by Sandoval, not only in his person, but also with his fortune granted the land unconditionally with the boundaries set forth in the petition, and directed the justice of the peace of Socorro to place him in possession of the land, which was done on the 7th day of March, 1846.

The land is proven in evidence to have been occupied and cultivated by Sandoval from the date of the grant to the present day.

The papers acted upon in the case are the originals filed by the claimants.

The grant having been made by the proper authority of the country for services rendered to the Government, and being absolute and unconditional, it is approved to the said Antonio Sandoval and ordered to be transmitted to Congress for its action in the premises.

WM. PELHAM,
Surveyor General.

Surveyor general's office, Santa Fé, New Mexico, July 20th, 1859.

145 (DEFENDANT'S EXHIBIT F.)

U. S. Stats. at Large, vol. 12, p. 71.

"CHAPTER CLXVII.

"An act to confirm certain private land claims in the Territory of New Mexico.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, * * *."

* * * * * * *

"SEC. 3. And be it further enacted, That private land claims in the Territory of New Mexico, as recommended for confirmation by said surveyor general in his report and abstract marked Exhibit A, as communicated to Congress by the Secretary of the Interior, in his letter dated the third day of February, eighteen hundred and sixty, and numbered from twenty to thirty-eight, both inclusive, be, and the same are hereby, confirmed, with the exception of the claim numbered twenty-six, in the name of Juan Vigil, which claim number twenty-six is not confirmed.

"SEC. 4. And be it further enacted, That the foregoing confirmation shall only be construed as a quitclaim or relinquishment on the part of the United States and shall not affect the adverse rights of any other person or persons whomsoever."

Approved June 21, 1860.

146 (DEFENDANT'S EXHIBIT G.)

UNITED STATES OF AMERICA, }
Territory of New Mexico. }

To Alexander P. Wilbar, surveyor general of the Territory of New Mexico:

Your petitioners, Fernando Nolan, Eugenio Nolan, Antonio Nolan, Leonora Nolan, Francisco Nolan, all children of Gervacio Nolan, dec'd, and Eneria Delgado and Manuelita Delgado, children of Eneria Nolan, deceased, daughter of said Gervacio Nolan, deceased, and Maria Dolores Lalando, widow of the said Gervacio Nolan, dec'd, citizens of the United States and residents of the Territory of New Mexico, represent to you that, as heirs-at-law of Gervacio Nolan, they are the claimants and legal owners in fee of a certain tract of land lying and being situate in the county of Mora, in the Territory of New Mexico, and partly in the county of Arapahoe, Territory of Kansas, and known as the Cuerno Verde grant, and bounded and described as follows: Beginning at a point one and — half leagues below the mouth of the River St. Charles on the River Arkansas at a monument No. 1 on the south bank of said river, thence following the said south bank of said River Arkansas upwards to a point five leagues above the junction of the St. Charles with the Arkansas river, where is placed the second monument

thence running half way up the brow of the mountain, where is placed the third monument; thence following the same brow of the mountain to a point opposite the first monument, where is placed the 4th monument; and the said claimants, heirs of Gervacio Nolan, claim a perfect title to said land by virtue of a grant made on the first day of December, A. D. 1843, by Governor Manuel Armijo, political chief of the province of New Mexico, to Gervacio
147 Nolan; which said grant was made, as aforesaid, by authority and in accordance with the laws and usages of the Republic of Mexico at that time and of the Spanish laws and regulations which were declared and recognized by the government of Mexico to be in force and effect at that time. See Collections of Decrees and Orders of the Cortez of Spain, published in Mexico by Mariano Galvan in 1829, page 56 and from page 91 to 101. The said heirs and legal representatives of the said Gervacio Nolan cannot show the quantity of land claimed, except as set forth in the documents of said grant, as within the above-described metes and bounds, nor can they furnish a plat or map of the same, as no survey has ever been made, but present the accompanying documents as full proof of title to the said land, and prays its confirmation.

JNO. S. WATTS,
Att'y for Claimants.

148 (DEFENDANT'S EXHIBIT H.)

Sello cuarto—Dos reales.

Años de mil ochocientos cuarenta y dos y mil ochocientos cuarenta y tres.

Exmo. Sr. Gobor:

Gervacio Nolan, frances naturaldo, y vecino del valle de Taos, ante V. E. respetuosamente hago presente, ql. deseando impulsar la agricultura ramo tan recomendado por nuestras leyes patrias, y encontrandose baldio y sin cultivo el Rito de D. Carlos desde su nacimiento hasta su confluencia con el Xapeste terreno aproposito y ql. presta las comodidades necesarias para establecer una siembra capaz para proporcionar la mantencion do mi familia y un ameno campo para la cria de ganados mayor y lanar, deseando ocuparme de ambos ramos, y como por otra parte me considero protejido por las leyes para acometer esta empresa, no he vacilado de ocurrir a V. E. como el medio seguro para conseguir la posesion del referido rio a fin de ql. si no hay un tercero qi. me lo embarace y estubiere como en efecto esta libre y baldio se me conceda en posesion, protestando empeñar toda mi posibilidad en adelantar su cultivo y no desampararlo hasta haver establecido y radicado mi permanencia en el, ofreciendo que dentro del termino ql. me conceden las leyes establecere la colonia y pondre en ella los ganados que me fueren posible para proporcionarme la subsistencia. Por todo lo cual.

A. V. E. pido y suplico ql. haviendome por presentado se sirva acceder a mi solicitud si asi lo considere conforme y arreglado a la justicia.

GERVAISIO NOLAIN.

Santa Fé, Noviembre 14 de 1843.

(Defendant's Exhibit I.)

Santa Fé, *Dic're* 1 *de* 1843.

Al Sr. Prefecto para ql. de sus ordenes al juez de la primera demarcacion de Taos, para ql. de la posesion a ql. se refiere el
149 petente y la documente conforme a las leyes de la materia, asegurandose antes que en efecto esta baldia y ql no se hace perjuicio a tercero, pues si hubiere algun embaraso ql. estorbe para obrar informara el ql. sea.

ARMIJO.

DONACIANO VIGIL, *Sn. Into.*

(Defendant's Exhibit J.)

Rio Arriba, *D'bre* 8 *de* 1843.

El juez de paz de la primera demarcacion de Taos teniendo a la vista el superior decreto de fha. 1° de D'bre del E. S. Gobernador Dn. Man'l Armijo le dara su puntual y devido cumplimiento, teniendo presente cuantos puntos en dicho superior decreto se hallan, sin dar lugar a perjuicio alguno.

ARCHULETA.

(Defendant's Exhibit K.)

Sr. Juez de Paz de la 1ª Demarcacion, D. Cornelio Vigil:

El que subscribe, cuidadano Mejicano y residente en este departamento, ante V. en la mejor forma que haya lugar en derecho, paresco y digo: Que habiendosenos donado por el govierno del departamento el terreno valdio que demarca la adjunta instancia como se ve por el superior decreto sentado al margen, y careciendo del titulo de posesion que me asegure nuestra legal propiedad y ninguno pueda turbarnos en ella, suplico de V. se sirva hacerme por presentado y desde luego ampliarme esta para los usos de nuestro derecho. Por tanto A. V. pido se sirva acceder a mi solicitud pr. ser justicia que impetro, juro no ser de malicia y lo necesario, &c.

GERVACIO NOLLIN.

D'bre 9 de 1843.

150 Diciembre 10 de 1843.

Por presentado y admitido en cuanto haya lugar en dro. pasese por mi el presente juez con los de asistencia e instrumentales al lugar que citan los documentos adjuntos, y dese a los petentes la posesion que solicitan pa. qe. por si y por sus herederos y sucesores sea havido en dro. El ciudadano Cornelio Vigil, juez de paz de la 1ª. demarcacion de Taos asi proveyo mando y firmo con los de assa. doy fee.

CORNELIO VIGIL.

Assa.:
CARLOS BEAUBIEN.

Assa.:
LUIS LEE.

(DEFENDANT'S EXHIBIT L.)

En el pueblo de Taos a los quince dias del mes de D'bre mil ochocientos cuarenta y tres yo el C. Cornelio Vigil, Juez de Paz de esta demarcacion en virtud de lo mandado en el decreto ql. antecede, pase al terreno ql. refiere D. Gervacio Nollin en el antecedente escrito, y estando en el con los de mi asistencia e instrumentales ql. al fin se nombraran se procedio a señalar las mohoneras de los limites conforme se describe el terreno en la preinserta peticion y corresponde al mapa qe. rubrico ; y empesando por la banda del sur del rio del Napeste a una legua y media vajo de la confluencia del rio de Don Carlos conaquel, se puso una mohonera, donde siguiendo el mismo rio del Napeste para arriba hasta cinco leguas arriva de la confluencia del mismo rio Don Carlos y se puso la 2ª. mohonera, continuando de hay para la cierra hasta media falda se puso la 3ª mohonera, donde siguiendo la misma falda de la cierra de norte a sur hasta llegar al frente de la primera mohonera se puso la cuarta y ultima mohonera ; y registrado lo tome de la mano,
lo pasee e hice tirar tierra, arrancar yerbas y otras demos-
151 traciones de propiedad, con lo ql. se concluyo el acto quedando determinados los linderos sin qe. hubiese aparecido reclamo alguno de perjuicio de tercero, por qe. yo el referido juez a nombre de la soverania de la nacion (q. Dg.) le di al mencionado G. Nollin la posesion personal y perfecta qe. solicita para que le sirva de titulo a el, sus hijos y sucesores, por lo cual les amparo y defiendo y mando que de ella no sean despojados sin ser primero oidos y por fuero y dro. vencidos—en fe de lo cual lo firme con los de mi asistencia y los instrumentales ql. lo fueron los cc. Jose Gabriel Vigil, Juan Ortega, y Ceran Sn. Vrain presentes y vecinos de esta demarcacion. Doy fee.

CORNELIO VIGIL.

Instrumental:
JUAN ORTEGA.

Instrumental:
JOSE GABRIEL VIGIL.

Instrumental:
CERAN ST. VRAIN.

Assa.:
CARLOS BEAUBIEN.

Assa.:
LUIS LEE.

Derechos 25 pesos.

Se registro este documento desde el folio 13 buelta al 14, lo que certifico. Santa Fe, Eno. 27 de 1847.

DONACIANO VIGIL.

152 (DEFENDANT'S EXHIBIT H.)

Translation.

Fourth seal. Two rials.

Years one thousand eight hundred and forty-two and one thousand eight hundred and forty-three.

Most excellent governor:

Gervacio Nolan, a naturalized Frenchman and resident of the valley of Taos, respectfully represents to Your Excellency that, being desirous of advancing agriculture, a branch so much commended by the laws of our country, and the valley (rito) of the Don Carlos from its headwaters to its confluence with the Arkansas being vacant and uncultivated—land suitable for the purpose—and which furnishes the necessary accommodations to establish a farm capable of furnishing the maintenance of my family and a fine range for the raising of large stock and sheep, being desirous of occupying myself in both branches, and as on the other hand I consider myself protected by the laws to undertake this enterprise, I have not hesitated in coming before Your Excellency as a sure means of obtaining possession of said river, in order that if there is no third person who might embarrass me, and it being, as in fact it is, unincumbered and uncultivated, the possession may be conceded to me, pledging myself to do all in my power to advance its cultivation, and not to abandon it until I have established my settlement and permanence thereon, offering that within time the laws allow me I will establish the colony and put in it the live stock I may find possible, for my subsistence.

In consideration of all which I ask and pray that, having presented myself, Your Excellency be pleased to grant my petition, should you consider it in conformity with justice.

Santa Fé, November 14, 1843.

GERVACIO NOLAN.

153 (DEFENDANT'S EXHIBIT I.)

Translation.

SANTA FÉ, *Dec.* 1, 1843.

To the prefect:

That he may give his orders to the justice of the first demarcation of Taos, that he give the possession to which the applicant refers and execute the title papers according to the laws on the subject, first satisfying himself that the land is in fact vacant, and that no damage be done to a third party, but if any impediment should hinder him from granting it he will give information of what it may be.

ARMIJO.

DONACIANO VIGIL,
Secretary pro Tem.

(DEFENDANT'S EXHIBIT J.)

Translation.

RIO ARRIBA, *Dec.* 8, 1843.

The justice of the peace of the first demarcation of Taos, having in view the superior decree of His Excellency, Manuel Armijo, dated Dec. 1, will give it his punctual and due compliance, keeping in view the points said superior decree contains, giving no ground for damage.

ARCHULETA.

(DEFENDANT'S EXHIBIT K.)

Translation.

Cornelio Vigil, justice of the peace of the 1st demarcation:

The subscriber, a Mexican citizen and resident of this department, appears before you, in the form that may be most legally correct, and states, that the governor of the department having donated us the vacant land, as marked out on the annexed paper, as will appear by the superior decree placed on the margin, and wanting the title of possession which may sure us our lawful property, so that none may disturb us therein, I pray you to consider me before you, and then to extend me the possession for the purposes of
154 our claim. Therefore,

I ask that you be pleased to accede to my petition, it being justice which I impetrate. I affirm that it is not dissimulation, and all that is necessary, etc.

Dec. 9, 1843.

GERVACIO NOLAN.

DECEMBER 10, 1843.

Being presented and admitted as far as consistent with law, I, the present justice, with my assisting and instrumental witnesses, will proceed to the place which the accompanying documents refer to, and give the possession to the petitioners which they solicit, in order that they and their heirs and successors may hold it in law.

The citizen Cornelio Vigil, justice of the peace of the first demarcation of Taos, so provided, ordered and signed, with the assisting witnesses. I certify.

CORNELIO VIGIL.

Assisting:
CARLOS BEAUBIEN.

Assisting:
LUIS LEE.

(DEFENDANT'S EXHIBIT L.)

Translation.

In the town of Taos, on the fifteenth day of the month of December, one thousand eight hundred and forty-three, I, the citizen Cornelio Vigil, a justice of the peace of this demarcation, by virtue of the order in the foregoing decree, proceeded to the land which Gervacio Nolan refers to in the foregoing document, and being upon it with those assisting me, to be mentioned at the end hereof, proceeded to show the landmarks of the boundaries according to the land described in the foregoing petition, and which corresponds with the map which I
155 sign with my rubric. And commencing on the south bank of the Arkansas river a league and a half below the confluence of the Don Carlos river with the foremer river was placed the first landmark; thence following up the same Arkansas river five leagues above the confluence of the Don Carlos river was placed the second landmark; thence running half way up the brow of the mountain was placed the third landmark; and thence following from north to south the same brow of the mountain to a point opposite the first landmark, there was placed the fourth and last landmark. And this being recorded I took him by the hand, led him about, and caused him to throw earth, pull up weeds and make other demonstrations of ownership, with which the act was concluded and the boundaries determined, without any third person appearing to claim damage, for which reason, I, the said justice of the peace, in the name of the sovereignty of the nation (which may God preserve) have given the said G. Nolan, the perfect and personal possession which he solicits, in order that it may serve as a title to him, his heirs and successors. Therefore I protect and defend them, and command that they be not dispossessed of the land without first being heard and by the statutes and equity defeated.

In testimony whereof I signed this with my assisting and instrumental witnesses, who were the citizens Jose Gabriel Vigil, Juan Ortega and Ceran St. Vrain, all present and residents of this demarcation.

I certify.

CORNELIO VIGIL.

Instrumental:
JUAN ORTEGA.

Instrumental:
JOSE GABRIEL VIGIL.

Instrumental:
CERAN ST. VRAIN.

Assisting:
CARLOS BEAUBIEN.

Assisting:
LUIS LEE.

Fees, 25 dollars. [RUBRIC.]

156 This document is recorded from page 13 to 14, to which I certify.

Santa Fé, January 27, 1847.

DONACIANO VIGIL.

SURVEYOR GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT,
SANTA FÉ, NEW MEXICO, *January* 31, 1861.

The foregoing is a correct translation from the original Spanish on file in this office.

DAV. J. MILLER, *Translator.*

NOTE.—In the date of Archuleta's order in the original paper the "2" in "28" is written over with a "0," leaving "8," and in the petition of Nolan the date has been altered to "9." The petition was at first addressed to "Miguel Sanchez," of the "3rd" demarcation, then to "Cornelio Vigil," of the "1st." In the body of Vigil's order of December 10th the name of "Miguel Sanchez" and "3rd" demarcation are struck out, "Cornelio Vigil" and "1st" substituted, and in the body of the act of possession "Miguel Sanchez" is struck out and "Cornelio Vigil" interlined.

—— ——, *Translator.*

SURVEYOR GENERAL'S OFFICE,
SANTA FÉ, NEW MEXICO, *January* 31, 1861.

David J. Miller, whose name appears signed to the above certificate, is, and was at the time of signing the same, translator in this office and all his acts as such are entitled to full faith and credit.

A. P. WILBAR.
Surveyor General.

157 (DEFENDANT'S EXHIBIT M.)

GERVACIO NOLAN
vs.
THE UNITED STATES. } Land Grant.

It appears in this case from the original papers filed as composing the claim that on the 14th day of November, 1843, Gervacio Nolan petitioned Governor Manuel Armijo for a certain tract of land; that on the 1st of December the governor directed the prefect of Rio Arriba, in which district the land was situated, to order the justice of the peace to place Nolan in possession, provided the land was vacant and the granting of it would interfere with no third party, and on the 8th day of the same month the prefect ordered the proper justice of the peace to give the decree of the governor punctual and due compliance, not forgetting the conditions contained in the same. On the 9th Nolan requested in writing the justice to place him formally in possession of the land, and on the 10th the justice recorded

on the title papers his intention to comply with the request, and accordingly, on the 15th, he proceeded, with his assisting and instrumental witnesses, to the tract of land and measured off the same, placing landmarks along the boundaries; all of which appears from the documents on file, the signatures to which are proven to be genuine.

The name of Gervacio Nolan appears in the papers in several different forms. This is accounted for by the establishment of the fact by the witness Delgado, who was his son-in-law, that Nolan could not read and write, and the consequent conclusion that other persons must have written and signed his name at his request, thus rendering easy the commission of error in the stating of his name properly. It is concluded that Gervacio Nolan was his true name.

It may also be observed that the grantee's personal pro-
158 nouns appear in his petition and in the granting documents, both in the singular and the plural form, thus indicating that there were more than Nolan applying for and receiving the land; but the fact is, so far as the papers show, there was but one petitioner and one grantee, and therefore the claim, so far only as it relates to Nolan, can be considered, as he is evidently the only individual contemplated and known in the grant as the grantee.

The questions and principles involved in this case are very similar to those in the case of Charles Beaubien, assignee, etc., *vs.* The United States, heretofore approved by this office and confirmed by Congress. The grant in that case was made by the same authority and about the same time as the one now under consideration, and, in regard to the power of making it residing in Governor Armijo, it was stated by the surveyor general in his decision of that case, and is now repeated as equally applicable in the present instance, that the supreme authorities of New Spain, afterwards the Republic of Mexico, exercised from time immemorial certain prerogatives and powers which, although not positively sanctioned by congressional enactments, were universally conceded by the Spanish and Mexican governments, and there being no evidence that these prerogatives and powers were revoked or repealed by the supreme authorities, it is to be presumed that the exercise of them was lawful. The subordinate authorities of the provinces implicitly obeyed these orders of the governors, which were continued for so long a period that they became the universal custom or written law of the land wherein they did not conflict with any subsequent congressional enactment. Such is the principle sanctioned by the Supreme Court of the United States, as expressed in the case of Fremont *vs.* The United
159 States, 17 Howard, 542, which decision now governs all cases of a similar nature.

It is therefore held by this office, after full investigation of the claim, and the grant being dependant on no conditions, but being an absolute one, and having been made by competent authority, and the boundaries of the grant being clearly defined and plainly marked, that it is a good and valid claim against the public domain of the United States, and it is accordingly recommended that Con-

gress confirm the title to the land embraced by the grant to the heirs of Gervacio Nolan, deceased.

A. P. WILBAR,
Surveyor General.

Surveyor general's office, Santa Fé, New Mexico, October 8, 1861.

160 (DEFENDANT'S EXHIBIT N.)

U. S. Stats. at Large, vol. 16, p. 646.

CHAP. CCII.

An act to confirm the title of the heirs of Gervacio Nolan, deceased, to certain lands in the Territory of Colorado.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the grant to Gervacio Nolan, late of the valley of Taos, deceased, approved by the surveyor general of New Mexico, October eighth, eighteen hundred and sixty-one, and designated as number forty-eight in the transcript of private land claims in New Mexico, transmitted to Congress by the Secretary of the Interior on the twelfth day of May, eighteen hundred and sixty-two, but being now within the limits of the Territory of Colorado, is hereby confirmed to the extent of eleven square leagues.

SEC. 2. And be it further enacted, That the exterior lines of said claim of eleven square leagues as confirmed by this act, shall be adjusted according to the lines of the public surveys as near as practicable, but in a compact form, and the claims of all actual settlers falling within the limits of the located claim above referred to shall be adjusted to the extent which will embrace their several settlements upon their several claims being established either as pre-emption or homestead according to law, and for the aggregate of the *arears* (areas) so established under the pre-emption or homestead acts, the heirs of said Nolan, or their legal representatives, shall be entitled to locate a like quantity of public lands, not mineral, according to the lines of the public surveys, and not to exceed one hundred and sixty acres in one section: Provided, that such location shall be made within the bounds of the original grant by the order of Cornelio Vigil to Gervacio Nolan.

161 SEC. 3. And be it further enacted, That it shall be the duty of the Commissioner of the General Land Office to cause the lines of the public surveys to be run in the regions where proper location would place the said Nolan claim, and the expense of the same shall be paid out of any moneys in the Treasury not otherwise appropriated; but before the confirmation provided for in this act shall become legally effective the heirs of the said Gervacio Nolan, or their legal representatives, shall pay the cost of so much of said surveys as inures to their benefit respectively, and that all actual settlers whose claims may be adjusted as valid shall have a right to enter their improvements by a strict compliance with the pre-emption or homestead laws.

SEC. 4. And be it further enacted, That upon the adjustment of said claim of the heirs of Gervacio Nolan, according to the provisions of this act, it shall be the duty of the surveyor general of the district to furnish proper approved plats to said claimants, or their legal representatives, which shall be evidence of title, the same to be done according to such instructions as may be given by the Commissioner of the General Land Office: Provided, however, that when said lands are so confirmed, surveyed and patented, they shall be held and taken to be in full satisfaction of all further claims or demands against the United States.

SEC. 5. And be it further enacted, That immediately upon running the lines provided for in the second section of this act the surveyor general of the district shall notify the said heirs of Gervacio Nolan, or their legal representatives of the fact of such survey being made, and said claimants shall, within three months after notice of such survey, select and locate their said claims according to
162 the provisions of this act, and shall, within said time, furnish the surveyor general with a description of such location, specifying the lines of the same, and the party failing to make such selection and location in such manner and within such time shall be deemed and held to have abandoned their claim, and their rights and equities under this act shall cease and terminate.

Approved July 1, 1870.

163 In the Court of Private Land Claims.

JOEL PARKER WHITNEY ET AL. *vs.* THE UNITED STATES ET ALS. } No. 152. Estancia Grant.

Opinion.

In this case the claimants seek the confirmation of a grant to Antonio Sandoval made by Manuel Armijo, as governor of New Mexico, on the 7th day of December, 1845.

The tract granted contains about four hundred thousand acres of land. In his petition for the grant Sandoval represented that for thirty years he had been rendering services to the country both by personal service and contribution of money and property, and had received no compensation therefor, and asked that the tract be granted to him in compensation for these services.

In the granting decree the governor recited that Sandoval had rendered valuable services to the country, as he had alleged, and that there was also due to him nine thousand dollars as salary as prefect, and thereupon declares: "And the statements in the petition being true, I do in exercise of the power in me vested by the laws, and also in consideration of all the premises, and as a just title acquired, make to him a grant for the land he solicits, with all the dimensions and pasture lands he asks that he may enjoy the same in the name of the supreme government of the Mexican nation and under my concession free and exempt from all tax and tribute."

The complainants seek confirmation of the entire tract granted on

the theory that the grant on its face and in legal effect was a complete and perfect title at the time it was made. To sustain this theory it is further claimed that the grant was not made under the colonization laws of Mexico of Aug. 18th, 1824, and regulations of 1828; that these laws had before that time been repealed; that the governor in making the grant must be presumed to have acted under direct authority from the supreme government of the
164 nation; that therefore the grant was not subject to the limitations contained in the above-mentioned colonization laws, and not subject to the eleven-league limitation contained in the act of Congress creating this court.

It is appropriate to examine the question whether the colonization law of 1824 and the regulations of 1828 were repealed.

By the provisions of that law the lands within the limits of the States were to be colonized through the medium of the Congresses of the several States, and by section 16 it was provided that "the Government, under the principles established in this law shall proceed to the colonization of the Territories of the Republic."

Prior to that law New Mexico had been established as a Territory of the Federation.

In 1835 the form of the Government was changed from that of a federative system to that of a central system.

By a law of October 3rd, 1835, it was provided that the governors of the several States should continue in office, but subject, in the exercise of their functions, to the supreme government of the nation; that the legislatures of the several States should discontinue their legislative functions, and that in their place there should be created departmental boards (Reynolds, 195).

By a law of Oct. 23rd, 1835, it was provided that the national territory should be divided into departments, and that the several departments should be governed by governors and departmental boards (Reynolds, 201).

By a law of December 29th, 1836, comprehensive provisions were made for the government and regulation of the internal affairs of the departments, prescribing the powers and duties of the governors and of the departmental councils.

By this law there was no provision whatever made in any way affecting the colonization of the public lands, and nothing indicating that either the governor or the departmental council should have any authority in the matter (Reynolds, 203).

165 By a law of December 30th, 1836, the territory of the nation was divided into departments and the limits of the several departments defined, and by it New Mexico was made a department (Reynolds, 209).

Prior to the law of December 30th, 1836, the internal affairs of the Territories had been governed in substantially the same manner as was provided for the government of the departments—that is to say, they were governed by a governor and council, whose functions were substantially similar to the functions of the governor and council of the departments. The laws providing for the government of the Territories contained no provisions in any way affecting the

colonization of the public land, and no provision indicating that the governor or council should have any authority in such matters.

The law of August 18th, 1824, vested the power to colonize the public land within the Territories in the executive department of the nation—that is to say, in the chief executive of the nation. This power, then, vested in the office of chief executive, and the subject of the power was not the Territories themselves as political organizations or as instruments of the national government, but the subject of the power was certain public lands of the nation. It was the land which was to be operated upon, and not the territorial organizations. The lands so to be operated on were designated and identified as the lands lying within the limits of the Territories of the Republic.

The change of New Mexico from a Territory to a department made no substantial change of the political relations of the Territory to the Mexican nation. It certainly made no change in the relation of the supreme government to the land within the Territory. The change from a federal to a central system made no necessary change in the relation of the chief executive to the public lands within the Territories; in other words, the change in the internal organization
166 did not render the power of the chief executive to colonize public lands inconsistent with or obnoxious to the new order of things. The change was not a curtailment of the powers of the executive government, but an enlargement of them. Now, to justify a holding that the change from the federal to the central system operated as a repeal by implication of the law vesting in the executive government the power to colonize the public lands lying within the Territories, it must be clear beyond reasonable question that the further exercise of that power as to those lands was obnoxious to the new order of things.

The power to colonize the public lands within the Territories being vested in the executive government, the means and agencies for carrying out that power were wholly of the choosing of the executive. This agency was by the chief executive of the nation committed to the governor of the Territory; not because he was a territorial governor, but because he was the chief officer of the political organization within which the lands were situated and deemed to be the appropriate officer to exercise such a function. The change from a Territory to a department did not change the office of governor. It did not change the functions of that office, and in fact it did not change the incumbent, for the time being, of that office. The change from a Territory to a department cannot therefore be said to have necessarily operated as a revocation of the agency and authority theretofore conferred by the chief executive upon the office of governor. It required the action of the chief executive himself to have that effect. He still remained clothed with the power to colonize.

By a law of April 4th, 1837, it was provided "the government in concurrence with the council shall proceed to make effective the colonization of the lands that are or should be the property of the Republic, by sales, leases or mortgages, and shall apply the proceeds

(which in the first case shall not be less than $1.25 per acre) to the payment of the national debt already contracted or which shall hereafter be contracted, always reserving enough to meet its obligations to the soldiers who took part in the war of independence, and for the remuneration and gifts Congress may grant to Indian tribes and nations, and those who assisted in the restoration of
167 Texas; and it shall not be compromised by the laws heretofore enacted on colonization, which enactments are all repealed in so far as they conflict with this law, but the prohibition of article 11 of the law of April 6th, 1830, shall remain in force" (Reynolds, 222).

It will be noticed that this law was promulgated some time after the change from a federal to a central system had been made completely effective. Now, the language of this law shows, if it shows anything, that up to that time, April 4th, 1837, the colonization laws of August 18th, 1824, for it could have referred to no other, had not been repealed. If the colonization law had been repealed by the change of system or in any other manner, why incorporate in the act of April 4th, 1837, the provision that in carrying it out the executive should not be limited by the colonization law, but that the latter was repealed in so far as it conflicted with the act in question?

It now becomes appropriate to enquire to what extent the colonization law of August 18, 1824, was repealed by the law of April 4th, 1837. Let us contrast the two laws.

By the colonization law lands were to be gratuitously granted in consideration of settlement, and could be granted on no other consideration. In it were prescribed certain limitations upon the power to grant even for settlement and cultivation. One of these limitations was that lands within twenty leagues of the boundaries of a foreign nation and lands within ten leagues of the seacoast could not be granted. Another limitation was that not more than eleven square leagues could be granted to one person.

By the law of April 4th, 1837, the power was conferred to dispose of the public lands by sales for cash, by mortgage or by lease. By this law there was no authority to grant land upon the consideration simply of settlement and cultivation.

It must be borne in mind that, so far, at least, as lands
168 within the Territories were concerned, the power to grant for colonization and the power to sell, mortgage, and lease were vested in the same official, the chief executive of the nation. The management of the whole matter was committed to the same hand.

By the law of 1837 any land within the national domain could be sold for cash, mortgaged, or leased. By the law of 1824 it was prohibited to grant lands within twenty miles of the boundary or within ten miles of the coast. In so far, then, as the law of 1824 might be construed to prohibit the sale, mortgage, or lease of land within twenty miles of the national boundary or within ten miles of the coast, it was repealed; but in so far as it prohibited the grant of land for colonization within those limits it was not repealed. In so far as the law of 1824 might be construed to prohibit the sale for

cash, mortgage, or lease of more than eleven squares leagues to one person, it was repealed; but in so far — it prohibited the granting of more than eleven leagues to one person, in consideration of settlement and cultivation, it was not repealed. In these two points only did the two laws conflict. The uniting in the same hand the power to sell for cash and the power to grant in limited quantities for colonization is not the uniting of antagonistic powers. The exercise of both could be carried on side by side, and when we consider the vastness of the Mexican domain at the time we cannot believe that they were considered to be antagonistic by the Mexican government.

By a law of April 12th, 1837 (Reynolds, 223), it was provided "for the greater security in payment of the capital and interest of the consolidated fund the government of Mexico specially mortgages in the name of the nation one hundred million acres of public lands in the departments of the Californias, Chihuahua, New Mexico, Sonora, and Texas as a special guarantee of said fund until the total extinction of the credits." Just what this provision means or what effect it had is not clear. That any one obtained any rights under it does not appear. The lands it could by any possibility affect were but a mere drop in a bucket as compared to the immense area mentioned. If this enactment operated to repeal the colonization law of 1824, then it operated to repeal the law of April
169 4th, 1837, authorizing the sale, mortgaging, and leasing of land, and the whole system of disposing of public land within the departments named, either by sale or grant, was destroyed. Certainly it did not and was never intended to have that effect.

By a decree of April 17th, 1837 (Reynolds, 224), provision was made for the creation of departmental treasuries and superior chiefs of the treasury. By section 73 it was provided, "All purchases and sales that are offered on account of the treasury and exceed five hundred dollars shall be made necessarily by the board of sales." Provision was also made for the composition of said board and regulating the conduct of its business.

This decree was issued by the chief executive of the government. As we have seen, the power to make sales of the public land was vested in him, as well as the power to grant public land for colonization.

The creation of the board of sales and committing to it the conduct of the sales for cash to be made of the public land was the method adopted by the chief executive for carrying into effect the power vested in him of making sales for cash hereinbefore referred to and was in no way repugnant to the continuance of the power vested by the chief executive in the governor of New Mexico to make grants of land for settlement and cultivation.

On September 15th, 1837 (Reynolds, 227), a convention was entered into between the Mexican government and the English holders of Mexican bonds. This convention incorporated the provision above referred to mortgaging the one hundred million acres of land as a security for the consolidated fund and made provision that the holders of certain bonds might exchange them for lands in Mexico

and might establish themselves and families upon such lands, and thereby acquire all the rights and advantages of colonists.

By a law of June 1st, 1839 (Reynolds, 232), it was provided, among other things, "The convention made in London with
170 the holders of Mexican bonds on September 15th, 1837, is approved;" also, "with respect to the colonies that may be established by virtue of the convention, the government shall see that the existing laws on colonization, or those that may be enacted hereafter, are observed in so far as they are not contrary to the convention itself." Inasmuch as no other laws on colonization were ever enacted by the Mexican government than the law of August 18th, 1824, this provision seems to be a clear recognition by the Mexican government of the fact that, notwithstanding the change to the central system and all the laws and decrees which had been promulgated and the hundred-million-acre mortgage and the London convention, the colonization law of August 18th, 1824, was still existing.

An examination of the "Bases of Tacubaya" of September 28th, 1841 (Reynolds, 234), and the "Bases Organica" of June 13th, 1843 (Reynolds, 243), fails to disclose an intention, express or implied, to set aside the colonization law of August 18th, 1824. From this survey it follows that the law of August 18th, 1824, was not repealed, either by express enactment or by necessary implication, and was not considered by the law-making power of Mexico to have been repealed.

By decisions of the Supreme Court of the United States in the cases of United States *vs.* Vallejo, 1st Black, 541; United States *vs.* Vigil, 13 Wall., 449, and the Cambuston case, 20 Howard, 59, it has been declared that the colonization law of August 18th, 1824, and the regulations of 1828 were in force in New Mexico up to the time the sovereignty of the country passed to the United States. When it is remembered that the political department, which had exclusive jurisdiction of the subject, had delegated to the courts the power to determine and discharge the obligations of the government under the treaty as to rights of property in lands, it is reasonable to say that these decisions are to be regarded as the solemn declaration of the government as to the policy it would pursue in determining and discharging its duties with reference to titles to land protected
171 by the treaty, and that the law of August 18th, 1824, and regulations of 1828 should be regarded as having continued in force, and that titles regularly derived under their provisions should be regarded as valid. If, under any circumstances, a judicial decision can be said to become a rule of property, then surely these decisions, made under such circumstances, ought to be so regarded. It must be true that, on the faith of the national determination and declaration so made, large amounts of money have been invested in lands, the titles to which have been derived from the law of August 18th, 1824. To change that policy now would not only be a positive wrong, but would seriously affect the national honor.

It follows that the grant in question in this case was made subject to the law of August 18th, 1824, and regulations of 1828, and is

affected by the limitations imposed by those laws—that is to say, it could not be valid for a greater quantity than eleven square leagues and could not become a perfect title until the grant had been approved by the departmental assembly.

On November 24th, 1845, Antonio Sandoval, the grantee of the tract under consideration in this case, petitioned Governor Armijo for a grant of a tract of land called the "Bosque del Apache," and on the 28th of November, 1845, the land was granted to him in compliance with his petition. Subsequently Sandoval prosecuted a claim before the Congress of the United States for the confirmation to him of the land so granted.

By an act of Congress approved June 21st, 1860, entitled "An act to confirm certain private land claims in New Mexico," the grant of the Bosque del Apache tract was confirmed to him, being surveyor general's reported number 35 mentioned in section 3 of said act. Subsequently the land so confirmed was surveyed and patented by the United States to Sandoval, containing over sixty thousand acres of land and more than eleven thousand acres in excess of eleven square leagues.

At the time of the taking effect of the treaty of Guada-
172 lupe Hidalgo, Sandoval was the owner of both tracts of land—that is to say, of the Bosque del Apache tract and of the tract which is the subject of consideration in this case.

By a decision of the Supreme Court of the United States in the case of U. S. *vs.* Hartnell's Executors, 22 Howard, 286, it was declared that the governor of a Territory could not by his grant unite in one person more than eleven square leagues of land, although it was done by two separate and distinct grants, and that if two grants were made to the same person covering in all more than that amount, and if one of the grants was confirmed, the other grant could only be confirmed for the residue of the eleven square leagues after deducting the amount covered by the first confirmation. By the two grants from Armijo, Sandoval only became entitled to eleven square leagues of land. As this was the limit of his right as against the government of Mexico, it became the limit of his right against the United States under the treaty of cession. Purchasers from Sandoval obtained no greater right against the United States than Sandoval had under the treaty. At the time of the treaty Sandoval was the owner of the tract in question here and subsequently conveyed it to Nolan, from whom it passed to the present claimants.

By the provisions of the act of Congress creating this court the jurisdiction of the court is limited to the confirmation of such claims as the United States was bound to recognize and confirm by virtue of the treaty of cession of the country from Mexico to the United States.

Sandoval's right against the United States under the treaty having been already confirmed to him by the United States to the full extent to which the United States was bound to recognize and confirm it, it follows that this court has no jurisdiction to confirm anything further to him or to his grantees.

Sandoval could not by his conveyance to Nolan create any right

in Nolan which he, Sandoval, did not possess himself. Nor
173 could he by such conveyance create in himself and Nolan jointly a right greater than he himself possessed singly. Nor could he by asking and securing to himself a confirmation of one tract create in Nolan a right to a confirmation of the other tract. Nor could Nolan by permitting Sandoval to secure a confirmation of one tract obtain any right to the confirmation of the other tract. Nor could Sandoval and Nolan, either jointly or singly, by and action or omission on the part of either or both secure any right to the confirmation of more than eleven square leagues out of the whole of the two tracts originally granted to Sandoval.

It follows that the claim must be rejected.

Chief Justice Reed and Associate Justice Fuller concur in this opinion.

(Signed) HENRY C. SLUSS,
Associate Justice.

174 JOEL PARKER WHITNEY ET AL. vs. UNITED STATES. } Estancia Grant. No. 152.

I concur in the conclusion reached by the court in this cause, but not for the reasons stated. This grant was made in 1845 for the alleged consideration of long public services of the grantee to the nation and the further fact that the nation was largely indebted to him on account of salary as a public officer.

It is stated by the governor that he makes the grant in the exercise of power vested in him by law, but no law is referred to by him. The governor had no power by virtue of his office to grant the public land of the nation for any purpose. It is insisted by counsel that the court must presume that power had been conferred on the governor by the chief executive to make the grant in question. In other words, that the governor acted as the agent of the chief executive, and therefore his acts must be construed to be the act of the chief executive. Several authorities were cited to sustain this construction. The public vacant lands belonged to the nation and could not be alienated by the chief executive unless he was authorized to do so by some act of Congress. I have been unable to find any law of Mexico in force at the date of this grant under which the chief executive could have made a valid grant for the consideration mentioned in the granting decree. The colonization law of April 4th, 1837 (Hall's Mex. Law, page 115), was in force at the date of this grant, under the provisions of which act all the vacant public land was to be colonized by sales, leases, and mortgages at not less than 125 cents per acre, and the proceeds were to be applied to the payment of the public debt, except the reservation contained in said act, which reservation did not apply to any lands in the department of New Mexico. All colonization laws in conflict with its provisions were repealed. If all the vacant lands belonging
to the nation were to be sold, leased, or mortgaged, I must
175 confess my inability to see what lands were left to be colonized by donations under the provisions of the act of August

18, 1824, and the regulations of November 21, 1828; but as I have discussed that question at some length in an opinion in the case of The United States *vs.* Pinkerton, I will file the same in this cause.

The colonization law of Aug. 18th, 1824, and executive regulations issued on Nov. 21st, 1828, to carry into effect the provisions of the law in the Territories was a scheme to gratuitously colonize all the vacant lands belonging to the Republic, with the restriction contained in articles 4 and 7. It was possible that under the provisions of the law and regulations for any foreigner or citizen to acquire in any State or Territory of the Republic eleven square leagues, or about 48,000 acres of land, without money and without price, and as an inducement to individuals to influence families to immigrate to Mexico, the government guaranteed "the contracts which empresarios might bring at their own expense," and as a further inducement colonists were exempt from taxation for a period of four years. On April 6, 1830, a law was passed, article II of which prohibited foreigners from colonizing on the borders of any foreign governments.

The decree of Nov. 25, 1833, repealed article II of the law of April 6, 1830, and authorized the government to expend a sum of money for the purpose of colonizing the Territories. On the 4th of February, 1834, a circular was issued based on the law of Nov. 25, 1833, offering to pay expenses of colonists who would remove to Coahuila and Texas (both being one State).

As early as Jan'y 26, 1831, a general department of the revenue was established. Vol. 2, p. 308, Legislacion Mexicana. A circular was issued by the treasury department in relation to the revenues on July 7th, 1831—Legislacion Mexicana, vol. 3, p. 341—and a general regulation was issued on July 20th, 1831. Vol. 3, p. 2963, Legislacion Mexicana. These laws and regulations materially changed the law of 1824. The junta de almoneda (board of sale) was
176 created with powers to sell certain lands, and necessary machinery to collect the revenue belonging to the Republic was provided for. Mexican Statutes, vol. 2, pp. 303 to 351.

The Republic, prior to 1835, had contracted a large debt and was unable even to meet the interest upon it. The people had become dissatisfied with their form of government. The policy of gratuitous colonization of the public domain seemed to have proved a failure. A central system of government was created. The several States and Territories of the Republic were abolished and departments created in their stead.

And on the 29th day of December, 1836, the constitution of the new government was adopted. Legislacion Mexicana, vol. 3, p. 230, No. 1836. The change of the form of the government did not liquidate the large debt which had been created by the Republic. This was to be provided for. So with the change of the form of government a change in the form of system of colonization of the public lands was inaugurated. On the 17th day of Jan'y, 1837, twelve days after the adoption of the constitution, an act was passed by Congress creating a national bank and creating a mortgage in

favor of said bank on all the vacant lands in the Territory for the purpose of raising money. Mexican Statutes, vol. 3, p. 363.

And to further provide for the payment of the national debt the following law was enacted:

April 4, 1837, Hall's Mexican Laws, p. 115: "The government, with the concurrence of the council, shall proceed to carry into effect the colonization of the lands that are or ought to be the property of the Republic, by means of sales, leases or mortgages, applying the proceeds thereof (which in the first instance shall not be less than 10 reals per acre) to the payment of the national debt already created or that may be hereafter created, always reserving a sufficient quantity for the fulfillment of what has been promised to soldiers who took part in the war of independ-
177 dence, and for the giving of rewards and making concessions which Congress may decree in favor of Indian tribes or nations and those persons who assisted in the restoration of Texas without complication arising from the laws enacted up to the present time in relation to colonization, the provisions of which, in so far as they are in conflict with the present law, are hereby repealed (Deragon)," the prohibition of the 11th article of the law of April 6, 1830, being renewed. Thus it will be seen that the 7th article of the law of 1824 and the 11th article of the law of April 6th, 1830, the latter being merely the exercise of the power reserved by the former, were continued in force. The law of April 4th, 1837, applied to all the vacant lands that belonged to, or ought to belong to, the nation, and every acre of it, under the express provisions of the act, was to be colonized (if at all) by means of sales, leases, and mortgages, except such as might be disposed of under the reservation in favor of soldiers, etc. The proceeds arising from such sales, leases, and mortgages were to be paid on the public debt. All former laws on colonization in conflict with its provisions were repealed. The language seems too clear for misconstruction. It followed necessarily that all former colonization laws which provided for the gratuitous colonization of any part of the public domain were in direct conflict with it. The same land could not be colonized under the provisions of this law at 10 reals per acre, and at the same time be gratuitously colonized under the law of 1824.

In the decision of questions arising under these laws we should look to the construction put upon them by the highest officials of the Mexican government. There are no reported decisions of their judicial tribunals. We must, therefore, look to the legislative and executive departments.

I have shown that a law was passed on the 26th of Janu-
178 ary, 1831, which established a general department of the revenue, and that a circular of the Treasury Department was issued on July 7th, 1831, and the general regulations for collecting the revenue belonging to the Republic by sales, etc., were issued July 20th, 1831. On the 17th day of April, 1837, an act was passed to make effective the colonization law of April 4, 1837. This law provides for a new board of sale and regulations in relation to the disposition of the public lands, and continued in force all former laws

in relation to collecting the revenues not in conflict with it, and article 92 makes it the duty of the officers created by the act to discharge all the duties of the officers under former laws not in conflict with it, so that it will be seen that the regulations for collecting the revenue belonging to the Republic contained in all former laws not in conflict with said act of April 17th, 1837, became a part of the general revenue laws and regulations of the central government, and was to be enforced by the board of sale created by that act (Report Amellego, p. 330), and that act of April 17, 1837, together with the revenue laws and regulations adopted by it, constituted a complete system of collecting the revenue of the central government at that date, and all the public lands were to be disposed of by public sales, all contracts for sale to be approved by the government before they were made.

On April 12, 1837, an act was passed which provided a scheme for funding the national debt, and the following September a convention was made with the English holders of Mexican bonds for the purpose of getting the creditors to accept the scheme provided for funding the national debt and providing for its ultimate payment by means of sales and mortgages of the public lands, as provided by the law of April 4, 1837.

The creditors objected to the reservation in favor of soldiers, etc., contained in said act of April 4, 1837.

The result of the convention was that terms were agreed
179 upon by the Mexican officials having the matter in charge and the creditors of the government. The terms of the agreement were reported to the Mexican Congress, and on June 1st, 1839, an act was passed approving the same and providing the means for carrying it out. C. L., vol. 3, p. 624, No. 2056.

The 5th article of said act provides "That the reservation provided for in the law of April 4th, 1837, shall be satisfied as follows: As to those lands that were to be given as rewards to soldiers of Independence, their selection was to be made in Yucatan and the Californias; those which might be granted to Indians, to be located on the frontiers, and those that might be given to soldiers who had participated in the restoration of Texas were to be located along the coast on the gulf of Mexico within a distance of twenty-five leagues from the seashore." Article 3 provides: "With respect to the colonies which may be established in virtue of this convention, the government will take care that the laws now in force or those which may be enacted hereafter on the subject of colonization shall be observed in all respects in which they do not conflict with the convention itself." The agreement in relation to funding the national debt provided for two classes of security. The first was bonds, the second land warrants. The interest on both was secured by a pledge of certain customs revenues. The land warrants were to be satisfied by location upon the vacant public land at the rate of four acres per pound, but such location was subject to restriction under the 4th and 7th articles of the law of August 18th, 1824, and the 11th article of the law of April 6th, 1830.

These articles relate to foreigners within the border lit-oral leagues,

and are the only provisions of either of those laws that remain in force.

As further security for the consolidated debt, the Mexican government mortgaged 100,000,000 acres of land in the departments of California, Chihuahua, New Mexico, Texas, and Sonora as a
180 special guaranty fund until the debt was paid, but provided that the mortgaged land might be sold at not less than four acres per pound, and proceeds to be paid by the purchaser to the agent of the government at London, to be applied to the payment of said consolidated debt. Also 25,000,000 acres were especially set aside in the department nearest the Atlantic upon which the land warrants might be located. This law also provided for a bureau of colonization, to be composed of three persons, who were to be under the immediate control of the supreme government. They were to survey the landmark, boundaries, etc., and carry out the policy declared by the convention of September, 1837, in relation to funding national debt. Hall's Mexican Law, pp. 115 to 119.

The scheme for funding the national debt shows that neither the officials of the Mexican government nor the English holders of Mexican bonds believed that the colonization law of 1824 was in force. Before consenting to the scheme proposed by Mexico the English creditors required that the land which might be granted under the reservations of the law of April 4th, 1837, should be specifically located. The reason for this instance is obvious. They wanted to be able to determine about the value of the land to be pledged as security for the consolidated debt, and this they could not do unless they knew about the quantity and location of the land to be pledged.

The creditors also required that colonists which might be established in virtue of the convention, that the government should see that the laws now in force or those which might be enacted on the subject of colonization should be observed. The law of April 4th, 1837, then in force, provided that the public lands should be colonized by sales, etc., for not less than 10 reals per acre, the proceeds to be applied on the national debt. So the creditors were deeply interested in providing for the enforcement of this law.

181 It also provided, as I have shown, that one hundred million acres of land was pledged as a special guaranty for the payment of the consolidated debt, which land might be colonized by the Mexican government (provided the agreement made by the convention should be ratified) at not less than 1.25 per acre, the proceeds to be applied on the debt. The creditors were therefore interested in having this provision carried out when it became a law; but all this precaution was not only useless, but worthless, if the governors of the several departments could have gratuitously colonized the public lands of the government by granting fourty-eight thousand acres to any person who might comply with the provisions of law of 1824 and regulations of 1828.

The creditors would not have been interested in having any colonization law carried out by the government of Mexico that provided for the disposition of the vacant public lands otherwise than by sales, lease, etc.

There is no presumption in favor of the power of the governor of the departments to make grants to the vacant lands belonging to the Mexican nation.

See U. S. *v.* Cambuston, *supra.*

Jones *v.* Garza, *supra.*

The constitutional laws of December 29th, 1836 (sixth law, page 254, volume 3, Legislacion Mexicano), defines the duties and powers of the governors of the departments as follows:

"Article 7. The duties of the governors are: I. To take care of the preservation of public order in the internal matters of the department. II. To dispose of the armed forces that the laws give him right to dispose of, for that purpose. III. To comply with and make others comply with the decrees and orders of the general government and the acts of the departmental boards (junta departmental), which shall have received the previous approval of Congress, in those cases in which that approval is
182 requisite. IV. To send to the general Congress, together with his report, all the acts of the departmental (junta). V. To make the appointment of prefects approve the appointment of subprefects in the department, confirm that of justice of the peace, and to remove any of these said officers, having first sought the opinion of the departmental (junta), touching the removals. VI. To make the appointment of such officers of the department whose appointment is not reserved to other authority. VII. To suspend as long as for three months and deprive of as much as one-half of their salaries for that time, any of the officers of the department. VIII. To suspend the ayuntamientos of the department by the consent of the departmental (junta). Whenever the governors shall have made use of any of the powers granted to them in this and the foregoing paragraphs they shall at once report the matter to the general government in order that it, according to its powers, may provide what it thinks proper in the matter of the said suspension. IX. To settle such doubts as may come up in the matter of elections of the ayuntamientos, and to accept, or decline to accept, the resignations tendered by that body. X. To make use of the exclusive prerogative mentioned in article 12, paragraph 17, and article 22, paragraph 8, of the fifth constitutional laws (which articles provide that he shall preside over the departmental board and in a case of a tie to cast a vote, but at no other time). XI. To urge the courts and judges to the prompt and just administration of justice, reporting the faults of the same to the proper superior authorities. XII. To exercise vigilance over the offices of the revenues (hacienda) of the department in such manner as shall be provided by law."

Decrees and orders of the provisional government, volume 2, from July, 1842, to June, 1843, called "Organic Bases," prescribe the powers and duties of the governors as follows:

"Article 140. The duties of the governors of the department are:

183 I. To maintain public order in the internal affairs of the department.

II. To publish the laws and decrees of the national Congress and the decrees of the president of the Republic, three days at the latest after receipt of the same by him, seeing to it that they are obeyed and complied with in the territory over which they have authority.

III. To publish the decrees of the departmental assembly and see to it that they are obeyed and complied with.

IV. To send to the supreme government the decrees of the departmental assemblies.

* * * * * * *

Article 142. The powers of the governor of the department are:

I. To return within eight days to the departmental assembly the decrees enacted by the same whenever he deems them repugnant to these bases or the laws. Should the assembly after the return insist on their passage, the governor will then send them within eight days to the government for the purposes stated in paragraph XVII of article 66, in the meantime suspending their publication.

II. To return to the departmental assembly once within eight days, such decrees as are passed by them which shall not be repugnant as stated in the foregoing article, giving the reasons that he shall have against their enactment. Should the assembly still insist upon their passage, he nevertheless shall not fail to publish the same.

III. To appoint the inferior political officers of the department.

IV. To appoint the officials whose offices shall be created to collect and distribute the revenues belonging to the department. In the making of these appointments the present incumbents shall be allowed to remain in office.

184 V. To propose with the concurrence of the departmental assembly to the president of the Republic, judges of the court of record, and assessors, after hearing in all cases the reports of the superior courts.

VI. To discharge in the case of employees of the department that same power given to the president by paragraph 8, article 87, and to impose fines on those who shall be guilty of disrespect, in such cases and manner as the law may provide.

VII. To take care that justice be administered without delay in the department, in the same manner as it is the duty of the president of the Republic to do so.

VIII. To be *ex officio* president of the departmental assembly with a right to vote in the proceedings in case of a tie, since he has no right to vote on the strength of his election.

IX. To dispose of the police forces for the ends for which they are instituted.

X. To be the chief of the public hacienda of the department, and with regard to the federal hacienda, he shall exercise such vigilance as the laws grant to him.

XI. To grant the permits for the establishment of public literary societies, or charity associations, and to revise their by-laws amending them in whatever is repugnant to the laws and to public order."

The governors had no power or authority to make grants of the public lands by virtue of their office, and I have shown that no

such power was conferred upon them by law. The constitution of 1836, prohibiting them from exercising any power not conferred by law, is as follows: "Restrictions on the governors and departmental juntas.—They cannot exercise any other authorities than those which are designated by law. The violation of this part of this article and the two preceding ones being a matter of the greatest responsibility." (See constitution of 1836, 6th law, section 15, para-
185 graph 3, volume 3, Legislacion Mexicano, page 256.) The regulations of 1828 applied alone to the lands in the Territories and authorized the governors, with the approval of the provincial deputations, to grant the public land.

But these regulations could not apply to the governors of the departments and departmental (juntas), (boards) created after the provisional deputations and the office of territorial governors had been abolished, unless Congress had so directed.

I have shown that the States and the Territories of the Republic were abolished and a new constitution adopted in 1836, and the former States and Territories made departments of the central government. The regulations of 1828 never did apply to the public lands in the States, and certainly could have had no application to the lands in the departments, which had formerly been within the States. The chief executive of the Mexican Republic never had any authority to dispose of the public lands or to confer power on any one else to do so, unless he was authorized by some law of Congress. He derived his authority to make the regulations of 1828 from article 15 of the law of August 18, 1824 (Hall's Mexican Law, section 501, page 149).

If the regulations of 1828 applied to the public lands in the departments which had formerly been within the Territories, no land could have been colonized under the law of 1824 or regulations of 1828, except in such departments. The legal title to all the vacant public land was in the nation and could not be conveyed by any one for any purpose without an act of Congress authorizing it to be done. Article 5 of the law of the 18th of August, 1824, provides that "if for the defense or security of the nation, the government of the federation should see fit to use any portion of these lands to construct warehouses, arsenals, or other public buildings, it might do so, with the approval of the general Congress (Hall's Mexican Law, section —, page —)." On the 6th day of April, 1830, Congress passed the following law: "Article 3. The executive shall have power
186 to take the lands he may consider suitable for fortifications or arsenals * * * (Sec. CL, vol. 11, page 154, No. 691)." So it will be seen that before the chief executive could appropriate public land for public purposes he must be authorized to do so by an act of Congress.

The officials in New Mexico paid no sort of attention to the laws regulating the disposition of the public lands. The records of the provincial deputation at Santa Fé are in evidence in this case, and from them it appears that the regulations of 1828 were entirely ignored, and that it was almost the universal custom of that body to make grants of land, so far as I am able to learn, without refer-

ence to quantity or quality. Petitions were addressed to the provincial deputation, a resolution passed appointing a committee to examine and report as to whether or not the land asked for should be granted. On the coming of a favorable report it was adopted and an alcalde appointed and directed to put the petitioner in juridical possession and the secretary directed to give him a certificate of title. About the same time and in the same town the governor was also making grants without reference to the action of the provincial deputation. In a number of instances the prefects (officers having a sort of police power in the subdivision of the department) were making grants to a large tract of land (some of which have been confirmed by Congress); so it appears that it was a poor officer, indeed, who di- not assume to be able to dispose of the public domain belonging to the nation.

The colonization law of November 27, 1846, and decree of December 4th, 1846, cover the whole subject of colonizing the vacant land belonging to the nation; but the colonization law of August 18, 1824, is not alluded to, and there is no authority in that law to dispose of the public land except by sales, etc. It is, however, decreed by the law of November 27th, 1846 (Hall's Mexican Law,
187 page 119), that, "in conformity with the provisions in the sixteenth article of the regulations issued for the execution of the law of the first of June, 1839, the board of colonization is established under the immediate consent of the department of relations. Which board shall be composed, as provided in the foregoing regulations, of three persons appointed by the supreme government." This law of June 1, 1839, as I have shown, approved the terms of settlement made by Mexico with her creditors in the convention of 1837, and created a national board of sale for the purpose of colonizing the land by sales, etc., as provided for in the law of April 4th, 1837. These regulations are recognized as being in force in 1846, and its provisions are referred to and adopted by that law. There was no time from 1837 to the date of the treaty in 1848 that there was not in existence a national board of sale fully authorized and empowered to sell and convey all the vacant lands belonging to the nation which were subject to taxation. It can make no difference, so far as this grant is concerned, whether the law of August 18th, 1824, was repealed or only suspended, as claimed by the petitioners. If suspended, the law suspending was in force when this grant was made. I am aware of the fact that in the case of The United States *v.* Vallejo, 1 Black, page 553, and the case of United States *v.* Vigil, 13 Wallace, page 449, and a number of other cases arising under the act of March 3rd, 1851, relating to Mexican grants to land in California, the Supreme Court of the United States held that the Mexican law of August 18th, 1824, and the executive regulations of 1828 *was* all the law in force in relation to making grants to the public lands belonging to the nation, except those relating to missions and towns. In the Vallejo case the court said:

"Now, the above are the only laws of the Mexican Congress passed on the subject of granting the public lands (meaning the law

of August 18th, 1824, and regulations of 1828), with the exception of those relating to missions and towns, which have no bearing on the question. None other have been produced on the argu-
188 ment, nor have our researches found any, nor were any ever discovered by the public agents which were authorized by this Government to inquire particularly into the subject. See Halleck's Report, March 1, 1849, executive document, 1st session, 31st Congress, page 1191. See also 3 Cal.s Reports, pages 23, 24, 25; *id.*, 37; 20 Howard, page 63; 21 *id.*, —; 23rd *id.*, page 315; 24 *id.*, page 349."

The general rule is that questions repeatedly before the Supreme Court and decided in the same way are not open for readjudication.

Wright *v.* Sill, 2 Black, page 544.
Minnisota Mining Company *versus* National Mining Company, 3 Wallace, page 332.

The rule in these cases is somewhat modified and explained in the case of Gaines *versus* Henson, 24 Howard, page 553.

But this case stands on entirely different grounds from any alluded to in any of the decisions I have been able to find. It is manifest from an examination of the reports and decisions of the Supreme Court referred to in the Vallejo case that a number of the laws and regulation- for the colonization of the public lands of the government of Mexico passed after the adoption of the central system in 1836 have never been considered by that court, and, as I have shown, said laws and regulations in terms deal with the whole question of colonization and are in direct conflict with the law of August 18th, 1824, and regulations of 1828. The correctness of the decisions of that court based on the law before it is not challenged, and on an appeal in this cause the court would only be called upon to examine laws and regulations of the Mexican government in regard to the disposition of her public lands in force at the date of this grant which have never been presented to that court for adjudication. It has never been held by that or any other court of last resort (that I have been able to find) that when it appeared to the satisfaction of the court that a former decision had been based wholly on a statute which had been repealed prior to such decision that such decision would
189 not be held an exception to the rule of *stare decisis* unless some party to the suit not then before the court or some other party before the court had acquired property rights based on such former decision. The titles to all the land in California claimed under Spanish or Mexican grants have long since been settled and could not be affected by any decision which might be rendered in this case in relation to the land laws of Mexico.

The decisions of the Supreme Court of the United States made under the act of March 3rd, 1851, do not constitute a rule of property in this case; they were rendered long subsequent to the making of this grant, and subsequent to the treaty of Guadalupe Hidalgo.

So it is not possible that any right to the property in question which this court can consider should have been acquired on the faith of such decisions.

The claimants' rights (if any) depend on the law of Mexico in force at the date of the change of flags.

See McMicken *versus* United States, 97 United States, page 204;
Steinback *versus* The United States, 11 Wallace, page 566.
United States *versus* Dingley, 12 Peters, page 467.

"This court, in passing upon the rights of claimants, or the United States, must be controlled by the law of nations, the stipulation of the treaty, and the laws and ordinances of the government making the alleged grant." See section 7, act of March 3rd, 1891, 26 Statutes at Large, page 854.

(S'd) WILLIAM W. MURRAY,
Associate Justice.

December 20, 1898.

[L. S.]

A true copy.
JAMES H. REEDER, *Clerk*,
By IRENEO L. CHAVES, *Deputy*.

190 And thereafter, to wit, on the 16th day of December, 1898, the argument of the case was concluded and the matter submitted to the court for decision, and was by the court taken under advisement.

And be it further remembered that thereafter, to wit, on the 20th day of December, 1898, the court rendered its decision in the words and figures following, to wit:

Decree.

In the Court of Private Land Claims, Santa Fé District, 1898.

JOEL PARKER WHITNEY ET AL. *vs.* UNITED STATES. } No. 152. Estancia Grant.

This cause having been at a former day of the present term tried and submitted and taken under advisement by the court upon full legal proof and hearing, and the court, upon consideration and examination of said cause, being sufficiently advised in the premises, doth find that said petition for the confirmation of the private land claim known as and called "the Estancia grant," situate in the counties of Valencia and Bernalillo, Territory of New Mexico, and described as follows, to wit, bounded on the north one league from the Berrendo springs, the said spring being included in the possession; on the south one league from the Salt lakes, the said lakes also being so included; on the east the little hills of the Pedernal, with the range thereof, and on the west the water of the Mesteñas,

said grant being reported No. seventy (70) in the office of the surveyor general of New Mexico, has not been sustained by satisfactory proof, and that the title so ascerted to the tract of land alleged to have been petitioned for by Antonio Sandoval on December 5, 1845, to the governor of the department of New Mexico, and alleged to have been granted to said Sandoval by Manuel Armijo, governor of said department, on December 7, 1845, and juridical possession of which is alleged to have been conferred upon said Sandoval by Jose Baca y Ortiz, justice of the peace of Real del Oro, on December 15, 1845, is of no validity, and that the grant or concession so claimed is not such an one as the United States are bound to recognize and confirm by virtue of the treaties of cession by Mexico to the United States, by the laws of nations, or by the laws or ordinances of Spain and Mexico.

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It is therefore ordered, adjudged, and decreed that the said claim to the said tract of land be, and the same is hereby, rejected and said petition dismissed this December 20th, 1898.

JOSEPH R. REED,
Chief Justice.

192 In the Court of Private Land Claims of the United States, Santa Fé District, New Mexico.

JOEL PARKER WHITNEY and FRANKLIN H. STORY, Plaintiffs,
vs.
THE UNITED STATES OF AMERICA, ELOISA BERGERE, A. M. Bergere, Mary J. Otero, Miguel A. Otero, Page Otero, Mamie J. O'Bryan, and Harry J. O'Bryan, Defendants.
No. 152.

Petition for Allowance of an Appeal in the Above-entitled Cause.

The above-named Joel Parker Whitney and Franklin H. Story, plaintiffs in the above-entitled cause, wherein the final decision and decree of the court of private land claims of the United States were made and entered at Santa Fé, in the Territory of New Mexico, on the twentieth day of December, in the year 1898, conceiving themselves aggrieved by the said decision and decree in that their petition for the confirmation of the land grant known as the Estancia (or Antonio Sandoval) grant was thereby rejected, do hereby appeal from the said decision and decree to the Supreme Court of the United States, and they pray that this their appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which the said decision and decree were made, duly authenticated, may be sent to the Supreme Court of the United States.

And the said plaintiffs (appellants) further pray that due citation upon this appeal may be issued and may be directed to and served upon all and singular the defendants in the said cause (appellees).

Dated Denver, Colorado, June 7, 1899.

JNO. H. KNAEBEL,
Attorney for Plaintiffs and Appellants.

[Endorsed:] No. 152. In the court of private land claims of the United States, Santa Fé district, New Mexico. Joel Parker Whitney *et als.*, plaintiffs, *vs.* The United States of America *et als.*, defendants. Copy. Petition for allowance of an appeal. Jno. H. Knaebel, Esq., attorney for plaintiffs and appellants.

193 In the Court of Private Land Claims of the United States, Santa Fé District, New Mexico.

JOEL PARKER WHITNEY and FRANKLIN H. STORY, Plaintiffs,
vs.
THE UNITED STATES OF AMERICA, ELOISA BERGERE, A. M. Bergere, Mary J. Otero, Miguel A. Otero, Page Otero, Mamie J. O'Bryan, and Harry J. O'Bryan, Defendants. } No. 152.

Upon the proceedings heretofore had and now of record in the above-entitled case (No. 152) in the court of private land claims of the United States, and upon reading the foregoing petition of the plaintiffs and appellants herein, on motion of John H. Knaebel, Esq., attorney for the said plaintiffs and appellants, it is ordered that the appeal prayed by the said plaintiffs and appellants in and by their said petition be, and the same is hereby, allowed, and the same is hereby made returnable in the Supreme Court of the United States on the eighth day of August, 1899.

Witness Hon. Joseph R. Read, chief justice of the court of private land claims of the United States, on this ninth day of June, 1899.

WILLIAM W. MURRAY,
Acting Chief Justice.

[Endorsed:] No. 152. In the court of private land claims of the United States, Santa Fé district, New Mexico. Joel Parker Whitney *et als.*, plaintiffs, *vs.* The United States of America *et als.*, defendants. Copy. Allowance of appeal in the above-entitled cause. Jno. H. Knaebel, Esq., attorney for plaintiffs and appellants.

194 Know all men by these presents that the undersigned, Joel Parker Whitney and Franklin H. Story, as principals, and George W. Knaebel and John H. Knaebel, as sureties, are held and firmly bound unto the United States of America, Eloisa Bergere, A. M. Bergere, Mary J. Otero, Miguel A. Otero, Page Otero, Mamie J. O'Bryan, and Harry J. O'Bryan in the penal sum of five hundred dollars, for the payment of which, well and truly to be made, we bind ourselves and our heirs, executors, and administrators firmly by these presents.

Sealed with our seals and dated this ninth day of June, A. D. 1899.

Conditioned that whereas the said Joel Parker Whitney and Franklin H. Story have taken an appeal from the decision of the court of private land claims of the United States in the case of Joel

Parker Whitney and Franklin H. Story against The United States of America and others, the said obligees, which appeal is returnable on the eighth day of August, 1899:

Now, if the said appellants shall prosecute the said appeal without delay and with effect and pay all costs that may be adjudged against them or any of them upon the said appeal, then this obligation shall be void; otherwise the same shall remain in full force.

JOEL PARKER WHITNEY, [SEAL.]
FRANKLIN H. STORY, [SEAL.]
By JNO. H. KNAEBEL, *Their Attorney.*
—— ——. [SEAL.]
JNO. H. KNAEBEL. [SEAL.]

Approved June 9th, 1899.

WILLIAM W. MURRAY,
Acting Chief Justice.

[Endorsed:] No. 152. In the court of private land claims of the United States. Joel Parker Whitney *et al. vs.* The United States of America *et als.* Copy. Bond on appeal. Jno. H. Knaebel, Esq., attorney for plaintiffs and appellants.

195 In the Court of Private Land Claims of the United States, Santa Fé District, New Mexico.

JOEL PARKER WHITNEY and FRANKLIN H. STORY, Plaintiffs,
vs.
THE UNITED STATES OF AMERICA, ELOISA BERGERE, A. M. Bergere, Mary J. Otero, Miguel A. Otero, Page Otero, Mamie J. O'Bryan, and Harry J. O'Bryan, Defendants. } No. 152.

Citation on Appeal to Supreme Court.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the United States of America, Eloisa Bergere, A. M. Bergere, Mary J. Otero, Miguel A. Otero, Page Otero, Mamie J. O'Bryan, and Harry J. O'Bryan, defendants and appellees, Greeting:

You and each of you are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, D. C., on the eighth day of August, A. D. 1899, pursuant to an appeal filed in the office of the clerk of the court of private land claims, wherein Joel Parker Whitney and Franklin H. Story are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the

Supreme Court of the United States, this 9th day of June, in the year of our Lord one thousand eight hundred and ninety-nine.

WILLIAM W. MURRAY,
Acting Chief Justice, Court Private Land Claims.

196 We hereby acknowledged service upon us of the foregoing citation this 9th day of June, A. D. 1899, in cause No. 152, court of private land claims of the United States, Santa Fé district, New Mexico.

MATT. G. REYNOLDS,
United States Attorney.
JAMES W. VROOM,
Attorney for Defendants and Appellees, Eloisa Bergere, A. M. Bergere, Mary J. Otero, Miguel A. Otero, Page Otero, Mamie J. O'Bryan, and Harry J. O'Bryan.

[Endorsed:] No. 152. Court of — land claims of the United States, Santa Fé district, New Mex. Joel Parker Whitney *et al. vs.* The United States of America *et als.* Citation. Filed June 9th, 1899. James H. Reeder, clerk, by Ireneo L. Chaves, d'p'ty. Jno. H. Knaebel, Esq., attorney for plaintiffs and appellants.

197 UNITED STATES OF AMERICA, } *ss:*
Territory of New Mexico, }

JOEL PARKER WHITNEY ET AL. }
vs. }
UNITED STATES. }

I, James H. Reeder, clerk of the court of private land claims, do hereby certify that the foregoing 196 pages contain a full, true, and perfect transcript of record entries and proceedings and of all the files and papers in the cause lately pending in said court in which Joel Parker Whitney *et al.* were plaintiffs and The United States of America was defendant, as the same appear of record and on file in my office.

Witness my hand and the seal of said court, at my office, in Santa Fé, New Mexico, this 3d day of August, A. D. 1899.

[Seal Court of Private Land Claims, Santa Fé, New Mexico.]

JAMES H. REEDER, *Clerk,*
By IRENEO L. CHAVES, *Deputy.*

Endorsed on cover: File No. 17,513. Court of private land claims. Term No., 133. Joel Parker Whitney and Franklin H. Story, appellants, *vs.* The United States, Eloisa Bergere, *et al.* Filed September 16th, 1899.